IN THE

Supreme Court of the United States

October Term, 1979

No. 79-349

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JURISDICTIONAL STATEMENT

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CITATIONS

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JURISDICTIONAL STATEMENT

E. I. Malone, the Minnesota Commissioner of Labor and Industry, appeals from the judgment of the United States Court of Appeals for the Eighth Circuit entered on June 5, 1979, affirming the judgment of the District Court for the District of Minnesota and ruling that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §§ 181B.01-.17 (1978) is unconstitutional.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals is not yet reported and is set forth in Appendix A herein. The opinion of the District Court is unreported and is contained in Appendix B herein.

JURISDICTION

This appeal arises from a lawsuit commenced in May, 1975, by White Motor against the Minnesota Commissioner of Labor and Industry (hereafter the "State") seeking a declaratory judgment that the Minnesota Pension Act was preempted by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA") and was unconstitutional under the United States' and Minnesota Constitutions.

Following a hearing on various motions, the District Court on March 18, 1976, declined to abstain and ruled that the Minnesota Pension Act was not preempted by the NLRA. Consequently, the court also denied plaintiff's motion for a preliminary injunction, which was based solely on the federal preemption issue, on the grounds that there was no substantial likelihood of success on the merits. 412 F.Supp. 372 (D. Minn. 1976). While the other constitutional issues were still pending, that decision was reversed by the Eighth Circuit Court of Appeals. 545 F.2d 598 (8th Cir. 1976).

The state appealed that decision to this Court and on April 3, 1978, this Court reversed the Eighth Circuit and ruled that the Minnesota Pension Act was not preempted by the NLRA. 98 S.Ct. 1185 (1978). Subsequently, on June 28, 1978, this Court ruled that the Minnesota Pension Act, as applied in a

separate case involving different facts from those in the *White Motor* case, was violative of the Contract Clause. *Allied Structural Steel Co. v. Spannaus*, —— U.S. ——, 98 S.Ct. 2716 (1978).

Following the decision in the *Allied Steel* case, White Motor in the District Court moved for summary judgment on the constitutional issues herein relying exclusively on their Contract Clause claim. The District Court granted that motion on October 25, 1978, and the Court of Appeals affirmed on June 5, 1979.

This appeal is being docketed in this Court within 90 days from the entry of the Court of Appeals' judgment. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(2).

STATUTE INVOLVED

The full text of the Minnesota Pension Act, Minn. Stat. §§ 181B.01-.17 (1978) is set forth in Appendix D.

QUESTION PRESENTED

Whether the Minnesota Pension Act unconstitutionally impairs the private contract rights of appellees White Motor Corporation and White Farm Equipment Company (hereafter "White Motor"), as embodied in their private employees' pension plan, under the Contract Clause of the United States Constitution, U.S. Const., art. I, § 10, cl. 1.

STATEMENT OF THE CASE

I. DESCRIPTION OF THE MINNESOTA PENSION ACT.

The Minnesota Pension Act, enacted on April 10, 1974, is directed at two historically typical methods by which employers avoid the payment of retirement benefits allegedly assured by private pension plans: (a) the mass termination of employees who have participated for a reasonable number of years in their employer's pension plan before their pension benefits have vested under the plan and (b) the termination of pension plans inadequately funded to provide the retirement benefits required by the plan. The Minnesota Pension Act protects Minnesota employees with ten or more years of covered service under a private pension plan from the forfeiture of pension benefits resulting from either method of avoiding the payment of pension benefits.[1]

That protection is afforded by requiring a Minnesota employer who ceases to operate a place of employment in Minnesota or terminates a pension plan to pay a pension funding charge if either such action results in the forfeiture of pension benefits. Minn. Stat. §§ 181B.03-.04 (1978). The pension funding charge is used to purchase annuities that will provide the protected employees with monthly pension payments on reaching retirement age. Minn. Stat. § 181B.12 (1978). The benefit provided by the annuity must be equal to that portion of the employee's normal retirement benefit as defined in the company's own pension plan that accrued during his or her years of covered service under the plan.

[1] The terms used in the Minnesota Pension Act are generally defined in Minn. Stat. § 181B.02 (1978). An "employee" for purposes of the Act includes these participants in the White Motor pension plan: retired former employees presently eligible for pension benefits (and, if deceased, their survivors in some instances); and "deferred vested" former employees, not of retirement age, who are eligible under the plan to receive some benefits upon reaching normal retirement age. *See* Minn. Stat. § 181B.02, subd. 4 (1976).

II. APPLICATION OF THE ACT TO WHITE MOTOR.

The Minneapolis-Moline Company, a farm implement manufacturer, had operated plants in Minneapolis and Hopkins, Minnesota, for many years. Since 1950 its unionized hourly workers had been covered by the company's pension plan. White Motor purchased the Minneapolis-Moline Company in January 1963, and became the successor to its pension plan. They continued to operate the two plants for nine and one-half years.

In January, 1972, White Motor announced it was closing both plants. At that time there were about 1,000 hourly employees at the two plants.[2] On June 30, 1972, the Lake Street plant in Minneapolis, the larger of the two plants, was closed. The Hopkins plant, with more than 200 workers, was kept open. Also on June 30, 1972, White Motor attempted to terminate the pension plan for its hourly employees at both plants. Because it was held in arbitration[3] between the union[4] representing the hourly employees and White Motor that the plan could not be terminated until May 1, 1974, the company again terminated the pension plan on May 1, 1974, approximately

[2] *See* Hearings on Private Welfare and Pension Plans, Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., at 721 (Chaired by then Senator Walter Mondale, this hearing is hereinafter cited as the "Mondale Hearing.")

[3] White Motor Corp. and U.A.W., 61 Lab. Arb. 320, 328, 331 (1973) (Seitz, Arbitrator) (hereinafter the "Arbitration Award"). In subsequent litigation, the award was upheld by the federal courts. *See* U.A.W. v. White Motor Corp., Civ. File No. 4-73-422 (D. Minn., May 6, 1974); *aff'd* U.A.W. v. White Motor Corp., 505 F.2d 1193 (8th Cir. 1974), *cert. denied,* 421 U.S. 921 (1975).

[4] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter the "UAW").

20 days after the Minnesota Pension Act went into effect. There are slightly less than 1,000 current retirees who were participants in the pension plan at the time of its termination[5] Nearly all of the workers and retirees involved in the instant litigation had vested rights under the pension plan.[6]

The federal protection afforded by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 *et seq.*, did not go into effect until after the May 1, 1974, termination of the White Motor pension plan[7] and, therefore, only the Minnesota Pension Act provides protection to these participants in the pension plan who lost substantial retirement benefits because of the plan's termination.

Following notice from White Motor of its intent to terminate the 1971 pension plan effective May 1, 1974, the Commissioner of Labor and Industry for Minnesota notified White Motor of the assessment of a pension funding charge and informed the company that it could request a hearing concerning, *inter alia*, the amount and method of satisfaction of that charge. White Motor did request such a hearing but the hearing has been held in abeyance pending the outcome of the instant litigation.

After the Pension Plan was initially established in 1950, the plan was carried forward in each of the subsequent years for which collective bargaining agreements were executed: 1950, 1954, 1959, 1962, 1965, 1968 and 1971. The 1971 version

[5] Mondale Hearing at 773, 774 (Table). *See* Affidavit of H. Herbert Phillips, par. 18(b).

[6] The White Motor Pension Plan granted vested rights if a worker had 10 years of service and was at least 40 years of age.

[7] ERISA termination insurance provisions became effective on the date of enactment, Sept. 2, 1974, and apply retroactively to plan terminations that occurred after June 30, 1974. 29 U.S.C. §§ 1381(a) and 1381(b).

of the plan (hereinafter the "1971 pension plan") is the version most pertinent to this action.[8]

When the Lake Street plant was closed in 1972, the majority of the employees were between the ages of 45 and 64.[9] Some current retirees had worked at White Motor's plants for as long as 40 years and many employees retired after as long as 25 to 40 years of employment[10] with the company and its predecessor. Often other job opportunities were refused because employees did not want to lose the pension benefits they were supposed to be accruing during those years of employment.[11]

In addition to the pension benefits outlined in the 1971 pension plan as described above, the plan also provided that pension rights would be enforceable only against the Pension Fund (§ 6.09) and that White Motor employees had no vested rights under the Plan prior to retirement (§ 6.17). Furthermore, White Motor retained the right unilaterally to terminate the pension plan at any time so long as the remaining funds were properly distributed (§ 10.02).

Despite these provisions, during their employment the members of the White Motor rank and file generally understood that they would each receive full pension benefits throughout their retirement years.[12] This understanding was nur-

[8] The history of the pension plan, to the extent relevant here, is set forth in the Arbitration Award. The 1971 pension plan is fully set forth in the Record of the Mondale Hearing at 678-705.

[9] Mondale Hearing at 774 (Table).

[10] *See id.* at 669, 673, 674, 712, 713; Retirees' Affidavits herein at A-30 (previously filed with the District Court).

[11] Mondale Hearing at 667; Affidavit of Mildred MacDonald, par. 8; Affidavit of Alfred H. Behrendt, par. 8; and Affidavit of Donald W. Duffy, par. 9, at A-73, 41, 75.

[12] Mondale Hearing at 670; 709; and *see* the Retirees' Affidavits A-30. Because of this understanding, at least some did not set aside additional funds to be used to supplement other sources of retirement income such as social security. *See* Affidavit of William Preston, par. 8; Affidavit of William E. Peters, par. 8; Affidavit of Roy G. Pierce, par. 10; Affidavit of Clarence Grose, par. 8, at A-42, 45, 48, 54.

tured not only by White Motor but also by the UAW[13] to such an extent that even employees who over the years had participated in contract negotiations relating to the pension plan did not question the company's promise of full pension benefits during a worker's retirement years.[14]

In March, 1972, White Motor announced that it intended to terminate the 1971 pension plan as of June 30, 1972, the day on which the Lake Street plant was to close. But, the company did not disclose the full impact of the pension plan termination until the June 3, 1972, Mondale Hearing. At that hearing, White Motor announced that the 1971 pension plan covering its union employees was only about 30 percent funded, and that there was a net deficiency in the fund of some fourteen and one-half million dollars when the fund was measured against the present value of the pension benefits promised.[15] White Motor further announced that when the 1971 pension plan was terminated, pension benefit payments would immediately be reduced to the level of benefits determined by White Motor in a March, 1972, "Guarantee Letter" and that supplemental pension benefits owing to employees who had opted for early retirement would no longer be paid.[16] The "Guarantee Letter" effectively reduced the level of benefits provided for in the 1971 pension plan by approximately 60 per-

[13] Mondale Hearing at 710.

[14] *Id.* at 671-672, 709, 713; Affidavit of Emanuel Walstrom, par. 7; Affidavit of William E. Peters, par. 7; and the Affidavit of Alfred H. Behrendt, par. 7. And, as noted *infra*, until almost the very day when White Motor ultimately closed the Minneapolis Lake Street plant, White Motor continued to inform its employees that they would be receiving their full pensions.

[15] Mondale Hearing at 783.

[16] Mondale Hearing at 738-39, 785. The "Guarantee Letter," dated March 3, 1972, is reproduced in the Record of the Mondale Hearing at 729. The letter was not a part of the 1971 collective bargaining agreement which included the pension plan and which was ratified by the rank and file. It resulted, apparently, from discussions between White Motor and the UAW in March, 1972.

cent.[17] The reduced benefits would be paid from the pension fund until it was exhausted and thereafter directly from company funds.[18] As of April 1, 1976, the retirees' benefits were again reduced to the level of benefits offered by the "Guarantee Letter," and those retirees are now living on approximately 40 percent of the benefits provided for under the 1971 pension plan.

THE QUESTIONS ARE SUBSTANTIAL

In holding that the Minnesota Pension Act is unconstitutional under the Contract Clause of the United States Constitution, both the Court of Appeals and the District Court relied exclusively on this Court's decision in *Allied Structural Steel Co. v. Spannaus*, —— U.S. ——, 98 S.Ct. 2716 (1978). Yet, neither of the lower courts opinions addressed the important factual distinctions between *Allied Steel*, and the instant case. Their holdings are, in fact, not truly supported by *Allied Steel*, are inconsistent with this Court's established standards in similar cases, and give the Contract Clause a dangerously broad meaning that could jeopardize traditional state police powers over a variety of subjects.

[17] Letter, UAW to retirees, dated June 26, 1975.

[18] The practical effect of this decrease in the level of benefits was graphically brought home at the Mondale Hearing. For example, Emanuel Walstrom was an employee of the Lake Street plant who at that time was about to retire. Just two days before the June 3, 1972 hearing he received an early retirement application form from the company explicitly stating that under the 1971 pension plan he would be receiving $355.66 a month, including supplemental benefits until he reached 65, and then $195.11 a month in regular benefits until his death. Because of the plan's termination and its lack of adequate funding, however, Mr. Walstrom's regular monthly pension benefits for life under the "Guarantee Letter" are only $76.94, and he received no supplemental benefits. Mondale Hearing at 713, 741; and *see* the Retirees' Affidavits at Appendix F herein.

THE MINNESOTA PENSION ACT'S IMPACT ON WHITE MOTOR'S CONTRACT OBLIGATIONS IS CONSISTENT WITH THIS COURT'S HOLDINGS IN ALLIED STEEL AND OTHER CONTRACT CLAUSE CASES.

A. The Allied Steel Case.

The only case relied upon by the Court of Appeals and the District Court in granting summary judgment to White Motor was *Allied Structural Steel Co. v. Spannaus*, —— U.S. ——, 98 S.Ct. 2716 (1978). As will become more clear hereinafter, however, the instant case is distinguishable from the *Allied Steel* case in some key factual respects so as to make the latter case an inappropriate basis to render a state statute unconstitutional.

First, in reviewing the reasonableness[19] of the Minnesota Pension Act as applied in the *Allied Steel* case, this Court seemed troubled primarily by the Act's 10-year vesting requirement. Under Minn. Stat. §§ 181B.03-.07 (1978), qualified employers are required to guarantee full pension credits accrued by employees with at least ten years of service under the employer's pension plan when the employer terminates a place of business or terminates a pension plan. In the *Allied Steel* case the result was that, "although the company's past contributions were adequate when made, they were not adequate when computed under the 10-year statutory vesting requirement," a requirement much different from the vesting

[19] It has long been established that a statute's *per se* impairment of private contract rights is not necessarily unconstitutional under U.S. Const. Art. I, § 10, cl. 1. This Court has recognized the need for flexibility to allow and respect the exercise of a state's reserved police powers. *See*, United States Trust Co. v. New Jersey, 431 U.S. 1 (1977); El Paso v. Simmons, 379 U.S. 497 (1965); and Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934).

provisions in the company's plan. —— U.S. ——, 98 S.Ct. at 2723. This effect was described as a substantial modification of the pension agreement and a form of retroactive compensation. —— U.S. ——, 98 S.Ct. at 2723.

The foregoing problem, however, does not generally exist in the instant case, since the vesting requirements of the employer's plan are comparable to those of the statute. White Motor's 1971 Pension Plan provides that any employee who has 10 years of continuous service with the company is eligible to receive pension benefits so long as he or she is at least 40 years of age. *See* Pension Plan §§ 6.02, 6.03. As of January 1, 1975, there already were 981 *retirees* and 233 *employees* over the age of 40 with at least 10 years of service under the company's own pension plan.[20] Thus, White Motor's failure adequately to fund its own pension plan has deprived more than 1200 persons of their promised pension benefits. This inadequacy is attributable to the Company and not to any computation under the statutory 10-year vesting requirement. Consequently, the primary basis for the holding that the Minnesota Pension Act was unreasonable in the *Allied Steel* case simply is not present in the instant case.

Second, unlike the employees in *Allied Steel*, the record in the instant case makes it obvious that the bulk of White Motor's employees and retirees relied on the Company's promises of full pensions. *Compare*, —— U.S. ——, 98 S.Ct. at 2724 and *see* Affidavits of Alfred Behrendt, Spencer Westerberg, Charles Dapper, Clarence Grose, Roy Pierce, Emanuel Walstrom, William Preston, Mildred MacDonald and Donald Duffy, herein at A-F. Indeed, as noted hereinabove, White Motor officials had been sending written notices to em-

[20] *See* White Motor Corp. v. Malone, 412 F.Supp. 372, 375 (D. Minn. 1976), *aff'd*, —— U.S. —— 98 S.Ct. 1185 (1978).

ployees reassuring them of their full pensions until literally the eleventh hour before the Company closed its Lake Street plant.

Third, the Allied Steel pension plan was non-contributory (no employee contributions) and did not require specific contributions even by Allied Steel. On the other hand, during collective bargaining with White Motor, the union negotiators clearly relinquished demands for increases in wages in exchange for specified future contributions to the employee pension fund. *See* Affidavit of Alfred Behrendt at A—— and Mondale Hearings at 670, 715-719. Such a quid pro quo is a fundamental reason why pension benefits are deemed to be merely a form of deferred compensation.[21] *See Craig v. Bemis Company*, 517 F.2d 677, 680 (5th Cir. 1975); *Inland Steel Co. v. N.L.R.B.*, 170 F.2d 247, 249-50 (7th Cir. 1948), *cert. denied in part* 336 U.S. 960 (1949), *aff'd on other grds.* 339 U.S. 382 (1950).

The above-described factors amply demonstrate that the *Allied Steel* case is far from dispositive of the issues herein. And, as shown hereinafter, there is also affirmative authority in support of the constitutionality of the Minnesota Pension Act under the Contract Clause.

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[21] This factor highlights another distinction between the instant case and Allied Steel. Because of the non-contributory nature of the Allied Steel pension plan and the substantial effect of the statutory 10-year vesting requirement, it was held that the Minnesota Pension Act as applied in that case resulted in retroactive compensation. —— U.S. ——, 98 S.Ct. at 2723. Clearly, the pension benefits at issue in the instant case have been fully earned by the White Motor employees.

B. As Applied Herein, The Act Serves A Public Purpose In A Reasonable And Necessary Manner.

In the courts below White Motor asserted three bases for alleging that the Minnesota Pension Act unconstitutionally impairs its contractual pension obligations: 1) the statute permits vesting of employee pension rights sooner than the Company's pension plan; 2) the statute obligates an employer to apply its own assets toward satisfying any deficiency in the pension fund; and 3) the statute impairs the company's right under the pension plan to terminate unilaterally the plan without further liability.

These claims, however, are subject to some important qualifications. First, as noted *supra*, most of White Motor's employees and retirees affected by the Minnesota Pension Act have already qualified for vested rights under the Company's own pension plan. Furthermore, the use of an employer's own assets to fund a plan and its right to terminate its plan are required only when that employer has failed to meet its obligation of fully funding the plan and only upon the termination of the plan or a place of business. Minn. Stat. §§ 181B.03-.07 (1976).

Moreover, the mere fact that a state law alters or modifies private contractual obligations does not make such a law unconstitutional. *Home Building and Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934). Under the standards set forth in *United States Trust Co. v. State of New Jersey*, 431 U.S. 1 (1977), even if a statute impairs contract rights, it will be upheld if it serves a legitimate public purpose and does so in a necessary and reasonable manner.

The Minnesota Pension Act is a broad enactment regulating a range of subjects in the area of private pensions, an area

where the number of broken pension agreements and shockingly underfunded pension plans is legion. *See* C. Siegried, "The Role of Private Pensions" in *Private Pensions and the Public Interest*, 7, 9 *et seq.* (1970); M. Bernstein, *Employee Pension Rights When Plants Shut Down: Problems and Some Proposals*, 76 Harv. L. Rev. 952 (1962).

The Minnesota Pension Act on its face is directed to the protection of the economic welfare of employees and senior citizens by assuring them the receipt of earned and expected pension benefits and, consequently, falls within the broad scope of the police power of the State of Minnesota. Indeed, the forfeiture of anticipated pensions because of inadequately funded plans is particularly devasting since it generally affects persons at an age when they frequently have no other source of income beyond Social Security and are normally too old or infirm to reenter the labor market. As a result, the loss of pension income can result in the inability to maintain adequate housing, clothing or nutrition.

The state interest in assuring adequate income to the elderly has long been established. *See Helvering v. Davis*, 301 U.S. 619 (1937); *see also Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *New York Central R.R. v. White*, 243 U.S. 188 (1917); and *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917). The public purposes of the Minnesota Pension Act, in particular, have been noted specifically by the Minnesota Supreme Court. *Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334, 338-340 (1977). In the lower courts White Motor argued that, by virtue of *res judicata* and collateral estoppel, the *Allied Steel* decision forecloses the raising of the public purpose of the Minnesota Pension Act in the instant case. However, the specific legal basis for the lower

court's holdings regarding the statute's public purpose is unclear.

Furthermore, this Court's unwillingness to find a public purpose for the Minnesota Pension Act in the *Allied Steel* case, —— U.S. ——, 98 S.Ct. at 2724, seemed based substantially on the view that the factual record in that case was insufficient on that issue. Certainly, the record in the instant case thoroughly demonstrates the important public purposes served by the statute. *See* Affidavits of Behrendt, Grose, Pierce, Walstrom, Preston, MacDonald and Duffy, at A-F. *See also, Allied Structural Steel v. Spannaus*, —— U.S. ——, 98 S.Ct. 2726-27 (Brennan, J., dissenting).

The foregoing uncontroverted affidavits vividly describe the public harm that would occur without the protections of the Act. They show the unquestionable economic hardships that would be suffered by hundreds of retirees and employees who had devoted many years of service to an employer in reliance on that employer's pension promises, only to learn that their pensions would be shockingly less than promised. Unfortunately this knowledge was not gained by the employees and retirees until it was far too late for them to obtain other economic security for their retirement years.

The mere fact that in retrospect the Minnesota Pension Act, because of Congress' subsequent enactment of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, can now be applied only to about 1200 White Motor employees does not detract from its public purpose. As noted hereinabove, Congress had debated the enactment of ERISA or similar private pension laws for many years before 1974. Thus, at the time of the passage of the Minnesota Pension Act, the Minnesota Legislature had every reason to believe that the Act would protect thousands of Minnesota

workers. Certainly, such an expectation is apparent from the face of the Act. Indeed, the very enactment of ERISA itself is evidence of the public purpose served by private pension protection statutes.

Consequently, *res judicata* and collateral estoppel are irrelevant to an examination of the nature and purpose of the Minnesota Pension Act in a case involving a different contract than that involved in *Allied Steel*. The *Allied Steel* case involved the validity of the Minnesota Pension Act only insofar as it applied to Allied Structural Steel Company. —— U.S. ——, 98 S.Ct. at 2718. In arriving at the determination that the Minnesota Act unconstitutionally impaired the Allied contract this Court used a two-pronged approach:

> In applying these principles to the present case, the first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. *The severity of the impairment measures the height of the hurdle the state legislation must clear.* Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

—— U.S. ——, 98 S.Ct. at 2723 (footnotes omitted, emphasis added). Thus, whenever there is a Contract Clause challenge, a court must make two independent examinations. First, it must examine the degree of the impairment which the state law is causing to a particular contractual agreement. Second, if there is more than a minimum alteration of a contract, the nature and purpose of the state law must be examined. However, as Mr. Justice Stewart stated in *Allied Steel*, it is the

"severity of the impairment" which determines the "height of the hurdle the state legislation must clear." —— U.S. ——, 98 S.Ct. at 2723. Thus, the more severe the impairment the higher the hurdle which the state law must clear, while a lesser impairment lowers the hurdle. Therefore, it is incumbent upon a court in *every* Contract Clause case to make an independent determination of the nature and purpose of the state law, because the public purpose hurdles it must clear would be different in each case because of differences in contracts. Principles of *res judicata* and collateral estoppel are simply not germane to such an examination where completely different contracts are at issue.

The Allied contract, according to a majority of this Court, was radically impaired by the Minnesota Pension Act because it drastically altered the time for vesting which had been agreed to by the parties and thus imposed "a completely unexpected liability" on Allied. Because of this severe impairment, this Court erected a very high hurdle for the Pension Act to clear and found that the nature and purpose of the Act did not meet that high hurdle. Significantly, even though the impairment of Allied's contract was undeniably severe, three of the Justices believed the nature and purpose of the Minnesota Act sufficiently important to find a valid public purpose in that case, (Brennan, J. dissenting, —— U.S. ——, 98 S.Ct. at 2726-27). In the *Allied Steel* case, where the impairment was found to be severe and totally unanticipated, it was nevertheless a very close question whether the Minnesota Act had a sufficiently critical nature and purpose to carry it over the high public purpose hurdle erected by the *Allied* majority.

In the instant case, the impairment of the White Motor contract is unquestionably less severe than the impairment of the

Allied contract. This is due primarily to the fact that the Pension Act's vesting provisions are nearly identical to the contracted for vesting provision in the White Motor contract, *i.e.*, 10 years of service pursuant to the Pension Act and 10 years of service and at least 40 years of age in the White Motor contract. Thus, White Motor certainly cannot assert that the amounts of its liability were unanticipated. The Act would have the effect of requiring the company to keep its pension promise made 22 years earlier and reiterated repeatedly.

Since the impairment of the White Motor contract is so much less than the impairment of the Allied contract, the "height of the hurdles" which the Pension Act must clear is considerably lower in the instant case than in *Allied*.

CONCLUSION

For all of the foregoing reasons this Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1893

WHITE MOTOR CORPORATION and
WHITE FARM EQUIPMENT COMPANY,
Appellees,

vs.

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MINNESOTA.

Submitted: May 15, 1979
Filed: June 5, 1979

Before BRIGHT, HENLEY and McMILLIAN, Circuit Judges.

HENLEY, Circuit Judge.

The defendant, E. I. Malone, Commissioner of Labor and Industry for the State of Minnesota, appeals from a summary judgment entered by the United States District Court for the District of Minnesota (The Honorable Donald D. Alsop, District Judge) holding that the Minnesota Private Pension Benefits Protection Act (hereinafter generally called the Act), 1974 Minn. Laws, c. 437, Minn. Stat. Ann. §§ 181B.01-.17, is unconstitutional, at least as applied to plaintiffs White Motor Corporation and its subsidiary White Farm Equipment Company.

The controversy arose after the Act became effective in 1974 and after the plaintiffs had announced the termination of a pension plan or pension plans for the benefit of Minnesota employees of White Farm Equipment Company. The Commissioner took the position that the Act should be applied to the plaintiffs, and that a large "funding charge" should be imposed upon them or at least upon the implement company for the purpose of protecting the vested pension rights of retirees and other employees of the implement company.[1]

On the strength of the decision of the Supreme Court in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), the district court held that the Act as applied to the plaintiffs was violative of the contracts clause of the Constitution of the United States,[2] and that plaintiffs were entitled to summary judgment on that basis. The ruling of the district court did not dispose of all of the issues in the case; however, as provided by Fed. R. Civ. P. 54(b), the district court ordered that judgment be entered immediately. That was done, and this appeal followed.

We affirm the judgment of the district court.

I

From the plaintiffs' standpoint the controlling pleading in the case is plaintiffs' Amended Complaint. In that pleading the plaintiffs alleged that the Act, as applied to them, violated the supremacy clause of the Constitution, Article VI, Clause 2,

[1] The Minnesota statute has now become obsolete by its own terms having been superseded by the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.* However, the superseding of the Act by the federal statute has no significance as far as this case is concerned. *See Fleck v. Spannaus*, 251 N.W.2d 334 (Minn. 1977), which was decided upon a certification of questions by a three judge federal district court in Minnesota, *Fleck v. Spannaus*, 421 F.Supp. 20 (D. Minn. 1976).

[2] Article I, § 10, Clause 1 provides in part that no State shall pass any law impairing the obligation of contracts.

in that the subject matter of the Act had been preempted by federal law, notably the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, that it violated the contracts clause that has been cited, that it violated the commerce clause, Article I, § 8, Clause 3, that it violated the due process and equal protection clauses of the fourteenth amendment to the Constitution, and that it also violated three provisions of the Constitution of Minnesota. Federal subject matter jurisdiction is not questioned and is established.

The Amended Complaint is drawn in eight counts. The first five counts allege, respectively, violations of separate federal constitutional provisions; the last three counts allege violations of the Minnesota Constitution. Count I is the preemption claim; Count II is the contracts clause claim. The other claims are not important at the moment. The Commissioner answered and denied that there was merit to any of the claims of the plaintiffs. Additionally, the Commissioner asked the district court to abstain from action in this case until the Act should be evaluated and construed by the Minnesota Supreme Court.[3]

II

It is now necessary to leave this case temporarily and go to a similar case that was filed in the district court shortly after this case was filed and which was also assigned to the docket of Judge Alsop. That case, which was docketed as D. Minn. No. 3-75 Civ. 178, was filed by a number of plaintiffs including Walter J. Fleck and his employer, Allied Structural Steel Company, against Warren Spannaus, Attorney General, and other defendants including Commissioner Malone. In that case, as in this one, the plaintiffs claimed that the Act

[3] Judge Alsop declined to abstain, and the propriety of his refusal is not a question presented by this appeal. We will say, however, perhaps gratuitously, that we feel that his action was proper.

violated the contracts clause, the commerce clause, and the equal protection and due process clauses of the Constitution, including the fourteenth amendment. It was also claimed, as here, that the subject matter of the Act had been preempted by federal legislation.

In the *Fleck* case, the plaintiffs sought injunctive relief on the basis of all of their constitutional claims. To the extent that an injunction was sought on the basis of the preemption claim, no statutory three judge court was required, but as to the other claims, as the law then stood, a three judge court had to be convened. *See 28* U.S.C. § 2281, repealed by Act of August 12, 1976, P.L. 94-381, § 1, 90 Stat. 1119. The plaintiffs moved for summary judgment or, alternatively, for a preliminary injunction.

Sitting as a single judge, Judge Alsop refused to abstain and held that the preemption claim was without merit. As to the other claims he asked that a statutory court be convened. *Fleck v. Spannaus*, 412 F.Supp. 366 (D. Minn. 1976). Such a court was convened and it consisted of Circuit Judge Heaney, Chief District Judge Devitt of Minnesota and Judge Alsop.

The three judge court held that there was no merit to any of the constitutional claims of the plaintiffs and dismissed the complaint. *Fleck v. Spannaus*, 449 F.Supp. 644 (D. Minn. 1977). In an earlier decision, *Fleck v. Spannaus*, 421 F.Supp. 20 (D. Minn. 1976), the three judge court had dismissed the individual claims of Fleck and others; that left the controversy essentially as one between Allied Structural Steel Company and the Commissioner and other state officials.

Allied sought and obtained review by the Supreme Court, and that Court held that, at least as applied to Allied, the Act

violated the contracts clause. The decision of the district court was reversed. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).

III

Returning now to the case at bar, we observe at the outset that plaintiffs here, unlike those in *Fleck*, caused their pleadings to be so drawn as to avoid any necessity for the convening of a statutory court. Basically, they sought declaratory relief only, there being no prayer for a permanent injunction.

The case having come to issue plaintiffs moved for a summary judgment on the preemption claim only and alternatively for a preliminary injunction based solely on that claim.[4] Again refusing to abstain, the district judge rejected the preemption claim and denied the motion for summary judgment or for a preliminary injunction. *White Motor Corp. v. Malone*, 412 F.Supp. 372 (D. Minn. 1976).

Since the order denied the motion for preliminary injunction, the district court's order was appealable, 28 U.S.C. §1292 (a), and the plaintiffs appealed. This court reversed the district court. *White Motor Corp. v. Malone*, 545 F.2d 599 (8th Cir. 1976). At the behest of the Commissioner, the Supreme Court granted review and reversed this court. *Malone v. White Motor Corp.*, 435 U.S. 597 (1978).

That decision was handed down on April 3, 1978, and the decision in *Allied, supra*, was handed down on June 28, 1978. Thereafter the plaintiffs moved for summary judgment based on the contracts clause, and their motion was granted. Due to

[4] As may be noted, this limited prayer for injunctive relief did not call for a three judge court.

the act of the district court in giving the Commissioner an appealable order under Rule 54(b), this appeal was taken.[5]

IV

Due to the obvious relation of this case to the *Allied* case, *supra*, it has been necessary to state the procedural history of both cases in considerable detail. We now turn to the substantive facts of this case, many of which are not in serious dispute.

White Farm Equipment Company (hereinafter simply White) is a manufacturer of farm implements and for many years White and a predecessor corporation operated two manufacturing plants in Minnesota, one at Hopkins, and a smaller plant on Lake Street in Minneapolis. White's parent corporation, White Motor Corporation, is engaged in the manufacture and sale of the White line of motor trucks and parts therefor. Both of the corporations are engaged in commerce or in operations that substantially affect interstate commerce, and both are unquestionably "employers" within the meaning of the National Labor Relations Act.

Employees at White's two plants have been represented historically by local unions of the International Union of Automobile, Aerospace and Agricultural Implement Workers of America, commonly referred to as UAW.

Prior to 1972 White had maintained an employee pension plan that was funded by contributions from White. Under

[5] The plaintiffs have chosen and to some extent have been permitted to put forward their contentions piecemeal. The district court has never passed on the claims based on the commerce clause, the due process clause, or the equal protection clause within the framework of this case, nor has it passed upon the claims based on the Minnesota Constitution. A reversal of the district court in this case might not end this litigation, and there might be further appeals to this court and perhaps even further reviews by the Supreme Court. Judicial efficiency and economy of time and effort are hardly promoted by the procedural course that has been followed.

that plan White employees were entitled to retire on pensions upon reaching a certain age, and pension rights of an employee might vest prior to retirement if certain conditions were met. However, White had no personal obligations under the plan beyond the assets of the pension fund, and White had certain termination rights. It appears that the plan was adequately financed to meet current obligations as long as White maintained the fund and continued to make contributions, but that the plan would be inadequately financed if for any reason the plan should be terminated.

Through the years the pension plan was renewed periodically as was the collective bargaining agreement between White and UAW. The plan and the collective bargaining agreements were evidenced by separate documents.[6]

With affairs in that posture, White announced in 1972 the imminent closure of both of its Minnesota plants and the discontinuance of the pension plan.[7] The Union objected to termination of the plan as of that time and took the matter to arbitration.

The collective bargaining agreement then in effect between White and the Union expired on May 1, 1974, and the arbitrator held that White had no right to terminate the plan prior to that date. White refused to accept that decision but out of precaution made a second announcement of termination effective as of May 1, 1974.

When White refused to accept the arbitrator's award, the Union filed suit in the district court (District Judge Earl R.

[6] We shall have occasion presently to mention in text the holding of this court in *International Union v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974). In our opinion in that case we had occasion to describe in some detail the termination provisions appearing in the respective documents and the relationship between the two sets of documents. We will not repeat those descriptions here.

[7] The Lake Street plant was closed. The Hopkins plant was not.

Larson) to enforce arbitration and prevailed. White (including the parent corporation) appealed, and we affirmed the district court. *International Union v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974).

The Act here in controversy became effective on April 10, 1974. The provisions of the Act have been set out in detail in earlier opinions published in this case and in the *Allied* case, *supra*. Suffice it for present purposes to say that if a business enterprise in Minnesota that had an employee pension plan during the effective life of the Act ceased to do business in Minnesota or discontinued the plan, and if the plan was inadequately funded to meet retirement requirements of employees with at least ten years service with the enterprise, the business was required to pay over to the State agency a "funding charge" sufficient to make up the deficit. The Commissioner determined initially the amount of the charge, but the employer was entitled to administrative and perhaps later judicial review.

In view of the holding of the arbitrator, later upheld by this court, White's pension plan was at least arguably in force when the Minnesota statute became effective. Apparently after we decided the arbitration controversy, the Commissioner advised White and its parent corporation that he was going to impose a large funding charge as provided by the Act. Plaintiffs were advised at the same time of their administrative remedies. However, it seems that the parties may have agreed that during the pendency of this litigation the Commissioner will not try to enforce his assessment and that plaintiffs will not seek administrative relief.

V

As we have seen, the Supreme Court in *Allied Structural Steel Co., supra*, reversed our holding in *Fleck, supra*. We

think that the holding of the majority of the Court in *Allied* can fairly be summarized as follows:

While the prohibition of the contracts clause is absolute on its face, it has never been given a literal construction. In the legitimate exercise of its police power a State may "impair" by "altering" the terms of a private contract, and the legislative action may either lighten or increase the obligations of the contractual obligor.

However, the contracts clause is a viable restriction of the powers of the States, and if a State undertakes to alter substantially the terms of a contract, it must justify the alteration, and the burden that is on the State varies directly with the substantiality of the alteration. A serious alteration of the terms of a contract resulting from state legislation is permissible if, but only if, the legislation is necessary to meet a broad and pressing social or economic need, if the legislation is reasonably adapted to the soluton of the problem involved, and if it is not overbroad or over harsh.

In *Allied* the Supreme Court held that the Minnesota Act did not pass constitutional muster when challenged on contracts impairment grounds. The Court did not think that the Act addressed itself to any broad or imperative problems such as those that arose in the depression of the thirties. The Court pointed out that the Act applied only to a limited class of employers and only to certain specific situations, and that it was also subject to certain other constitutional objections that might be raised under the contracts clause.

VI

In support of the motion for summary judgment that the district court granted ultimately, plaintiffs contended that this case was indistinguishable in princpile from *Allied*, and that *Allied* mandated upholding of plaintiffs' contracts clause

contention. The Commissioner contended that the two cases are distinguishable and that *Allied* should not be followed in this case.

The parties make essentially the same contentions here.[8]

In a full but unpublished opinion, Judge Alsop held that the two cases were not distinguishable, and that plaintiffs were entitled to summary judgment.

We have given careful consideration to the record in the case, including the opinion of Judge Alsop, the briefs of the parties, and the arguments of counsel. No useful purpose would be served by expanding the literature that litigation over the validity of the Act has already produced. We hold that the district court did not err in ruling that this case and the *Allied* case are not distinguishable in any controlling respect, and that plaintiffs were entitled to summary judgment. We so hold largely on the basis of the opinion of the district judge, and we give due, although not controlling, regard to Judge Alsop's long association and familiarity with both of the two cases that originated in his court.

Affirmed.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

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[8] The Commissioner is aided by an amicus curiae brief filed by an organization known as the "Gray Panthers," which is an activist group interested primarily in problems that elderly and retired people may encounter today.

APPENDIX B

(Caption)

MEMORANDUM ORDER

CURTIS L. ROY, Esq., Dorsey, Windhorst, Hannaford, Whitney & Halladay, Minneapolis, Minnesota, and FRANK C. HEATH, Esq. and JOHN L. STRAUCH, Esq., Jones, Day, Reavis & Poguel, Cleveland, Ohio, appeared for the plaintiffs.

WARREN SPANNAUS, Attorney General, State of Minnesota by KENT G. HARBISON, Esq. and RICHARD LOCKRIDGE, Esq., Special Assistant Attorneys General, St. Paul, Minnesota, appeared for the defendant.

This matter comes before the court upon the motion of the plaintiffs for summary judgment under Count II of the amended complaint, seeking a declaration of this court that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. Ch. 181B, (Minnesota Pension Act) is unconstitutional as violative of the provisions of Article 1, Section 10, Clause 1 of the United States Constitution prohibiting any state from passing any "law impairing the obligations of contract." The parties agreed at the time of oral argument that the case is in an appropriate posture for summary determination of that issue on the record now before the court.

Previously presented to this court was the issue of whether federal labor policy preempts the legislative power of the State of Minnesota to impose upon the plaintiff White Motor Corporation the obligation to fully fund its employee pension plan upon closing its factory and terminating its employees, notwithstanding an agreement to the contrary contained in the collective bargaining contract between White Motor and the

employee union. *See White Motor Corp. v. Malone*, 412 F. Supp. 372 (D. Minn. 1976), 545 F.2d 599 (8th Cir. 1976), —— U.S. ——, 98 S.Ct. 1185, 55 L. Ed.2d 443 (1978). The ultimate decision of that issue before the Supreme Court of the United States was that federal labor policy did not so preempt the legislative power of the State of Minnesota.

In the related case of *Fleck v. Spannaus* (3-75 Civ. 178), the issue presented was whether the application of the Minnesota Pension Act to the plaintiffs in that action was violative of Article 1, Section 10, Clause 1 of the United States Constitution prohibiting any state from passing any law impairing the obligation of contracts. *Fleck v. Spannaus*, 449 F. Supp. 644 (D. Minn. 1977), *rev'd sub nom. Allied Structural Steel Co. v. Spannaus*, —— U.S. ——, 98 S. Ct. 2716 (1978). The facts regarding the enactment of the Minnesota Pension Act and its application to the plaintiffs in both actions are fully set forth in the opinions referred to. No useful purpose would be served in attempting to restate them here.

In *Allied*, the Supreme Court of the United States held that the application of the Minnesota Pension Act to the Allied Structural Steel Company violated the contract clause of the United States Constitution. Notwithstanding the defendant's diligent efforts to distinguish and differentiate the facts and circumstances in this action from that of *Allied*, the court is convinced that the Supreme Court decision in *Allied Structural Steel Co. v. Spannaus, supra*, controls and is determinative of the issue here presented and requires the entry of judgment as prayed for by the plaintiffs as a matter of law.

Accordingly,

IT IS ORDERED That the plaintiffs' motion for summary judgment in favor of plaintiffs and against defendant on

Count II of the amended complaint on the ground that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. Ch. 181B, is unconstitutional as violative of the provisions of Article 1, Section 10, Clause 1 of the United States Constitution prohibiting any state from passing any law impairing the obligation of contracts is granted.

IT IS FURTHER ORDERED, based upon the court's express determination that there is no just reason for delay, that the clerk of this court enter judgment as follows:

> IT IS ORDERED, ADJUDGED AND DECREED That the Minnesota Private Pension Benefits Act, Minn. Stat. Ch. 181B, is unconstitutional as violative of the provisions of Article 1, Section 10, Clause 1 of the United States Constitution prohibiting any state from passing any "law impairing the obligations of contracts" as applied to the plaintiffs.

Dated: October 25, 1978.

DONALD D. ALSOP
United States District Judge

APPENDIX C

(Caption)

Appeal from the United States District Court for the ——— District of Minnesota.

This Cause came on to be heard on the record from the United States District Court for the ——— District of Minnesota and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed in accordance with opinion of this Court.

Taxes in for of Appellees: June 5, 1979

Costs of printing 10 copies of brief: $210.00

Total costs of Appellees for recovery from Appellant in the U.S. District Court: $210.00

A true copy.

Attest:

Robert C. Tucker, Clerk, U.S. Court of Appeals, Eighth Circuit. July 2, 1979.

APPENDIX D

CHAPTER 181B
PRIVATE PENSION BENEFITS PROTECTION

181B.01 CITATION. Sections 181B.01 to 181B.17 shall be known and may be cited as the "private pension benefits protection act".

[*1974 c 437 s 1*]

181B.02 DEFINITIONS. Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

(a) The complete termination of operations at a place of employment, or

(b) A substantial reduction in the number of employees at a place of employment, or

(c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, Sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but

who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under Section 401 of the United States Internal Revenue Code of 1954 as amended, but does not mean any plan establshed by collective bargaining agreement which is excluded from the coverage of 29 U.S.C. 186(c) (5) (B) by 29 U.S.C. 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by Section 501 (c) (3) of the United States Internal Revenue Code of 1954 as amended. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10. "Accrued portion of the normal retirement benefit" with respect to employees with ten or more years of covered service means the larger of either the presnt value of the pension benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if he continued to earn pension credits based on the covered service he would have accumulated had he continued as a plan participant until normal retirement age or if he continued to earn annually until normal retirement age the same rate of compensation as that which he had been earning prior to cessation, upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator of which is the total number of years he would have had in covered service in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07,

clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid vacation and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced to part time status as part of a plan to evade provisions to sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning

interest in a secure investment from the date of the cessation of operations onward would equal the value of the nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

[*1974 c 437 s 2*]

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such

vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[*1974 c 437 s 3*]

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[*1974 c 437 s 4*]

181B.05 VESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension bene-

fits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[*1974 c 437 s 5*]

181B.06 NONVESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[*1974 c 437 s 6*]

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS. An employer shall not be liable for any pension funding charge under sections 181B.03 to 181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years

prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (b) in at least eight of the ten years immediately prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (c) when the pension plan has been instituted less than five years prior to cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended.

[*1974 c 437 s 7*]

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

[*1974 c. 437 s 8*]

181B.09 INVESTIGATION BY COMMISSIONER. Upon receipt of such notification, or upon his own initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or

more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees, and any other facts or circumstances concerning the employer, his employees and the pension plan for such employees as may be necessary or useful to the commissioner to carry out his duties and responsibilities under sections 181B.01 to 181B.17. The investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to him any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek, through the attorney general acting on his behalf, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

[*1974 c 437 s 9*]

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS. As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to his satisfaction. Nonvested and vested pension benefits may be comprised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under sections 181B.01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the compromised pension credits and the value of the settlement must be as constant as is practicable.

[*1974 c 437 s 10*]

181B.101 LOSS OF RIGHTS CLAUSE VOID. A clause in a pension or profit sharing plan which provides that the employee will lose a vested right or vested pension or profit sharing benefit if the employee joins a competing employer is void. This section is effective for rights and benefits which become vested before or after August 1, 1975.

[*1975 c 307 s 1*]

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE. After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 to 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of

available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due, the employer shall be liable for interest on the amount due at the rate of eight percent per annum until the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

[*1974 c 437 s 11*]

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY. The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

[*1974 c 437 s 12*]

181B.13 RECOVERY OF AMOUNTS DUE. The commissioner shall maintain a separate record of each employee owed a pension funding charge under sections 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

[*1974 c 437 s 13*]

181B.14 ACTS CONSTITUTING TERMINATION. For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when he determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been terminated because of the employer's ceasing to operate its place of employment or a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

[*1974 c 437 s 14*]

181B.15 RULES AND REGULATIONS. The commissioner may promulgate rules and regulations to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary

to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes to sections 181B.01 to 181B.17.

[*1974 c 437 s 15*]

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS. The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

[*1974 c 437 s 16*]

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA. Sections 181B.01 to 181B.17 shall take effect April 10, 1974. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

[*1974 c 437 s 17*]

APPENDIX E

(Caption)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. I. Malone, the above-named appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Eighth Circuit filed on June 5, 1979, affirming the judgment of the United States District Court for the District of Minnesota dated October 25, 1978.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

Dated: August 8, 1979.

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD B. ALLYN
Solicitor General
515 Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2731
Attorneys for Appellant

APPENDIX F

(Caption)

AFFIDAVIT OF ALFRED H. BEHRENDT

Mr. Alfred H. Behrendt, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I currently reside at 3457 Central Avenue Northeast, Minneapolis.

2. I was a machine operator at Minneapolis Moline for approximately 30 years.

3. I started working at Minneapolis Moline May 12, 1942, and retired May 1, 1972, when I was 62 years old.

4. At the time I retired my salary was about $10,000 a year.

5. Just before I retired received a personnel sheet from the company which indicated that I would be receiving my full pension benefits of $387.65 a month which included a monthly early retirement supplement of $194.12. It was my understanding that I'd be receiving my regular pension benefit of $193.53 for life and my supplemental benefit until I reached age 65. A true and correct copy of this personnel sheet, dated April 18, 1972, is attached hereto as Exhibit A. I also received a letter from Mr. Tuohey, manager of employee relations for the company, confirming that I would be getting these amounts in pension benefits. A true and correct copy of the letter from Mr. Tuohey, dated May 10, 1972, is attached hereto as Exhibit B.

6. I received my full monthly pension benefits of $387.65 for about three months after retirement at which time my supplemental benefits were discontinued and my regular benefits were reduced to $90.83 a month. I received this reduced amount for a little over one year. I think it was in October of 1973 when I started receiving my full pension benefits again.

7. I always thought that my pension benefits were guaranteed. I participated in negotiations for the first pension plan and it was my understanding that these benefits were deferred compensation. In other words we were giving up some wages in order to receive the money later in pension benefits.

8. I relied so strongly on the promise of full pension benefits at retirement that in 1954 I gave up an opportunity to take a higher paying job with another company. I had been laid off from Minneapolis Moline for three months and during that time I accepted a temporary position with Rayette. Rayette offered me a full time job setting up and running a machine shop for them in St. Paul. I turned them down because I had 15 years seniority at White Motor and the pension promise gave me full security. Therefore, I went back to White Motor when I was recalled. I've regretted that decision ever since I've discovered that I will not get my full pension. I could have made twice as much money at Rayette than I was making with White because I would have been in charge of the machine shop.

9. At the present time I am receiving my regular pension benefit of $193.53 a month. My supplemental benefit was discontinued when I reached 65. When my benefit is cut back to $90.83 a month it will be difficult. My wife and I will have to make some pretty drastic changes in the way we are living. Right now she's working but she will also have to retire soon. After she retires with my pension benefit at only $90.83 we will have to move into a low rent housing project. I understand, though, that right now there is a one year waiting period to get into most of these housing projects.

FURTHER AFFIANT SAYETH NOT.

ALFRED H. BEHRENDT

Subscribed and sworn to me this 13th day of November, 1975. Henry Baron, Notary Public, Hennepin County, Minnesota. My Comm. Expires Nov. 14. 1980.

MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY PENSION BENEFITS
Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P, Special Early, Spouse Option

Alfred H. Behrendt	718-18-6640	932	5/12/42
Name	Social Security No.	Pension Unit	Date of Hire

2828 Portland Ave.So. Apt. 202	5/10/10	62	4/30/72	30.5
Address	Date of Birth	Age	Service Termination Date	Credited Service

Mpls., MN	55407	4/28/72	4/30/72
City State	Zip Code	Last Day Worked	Retirement Date

CLASSIFICATION OF RETIREMENT BENEFIT:
( ) NORMAL RETIREMENT
( ) T&P DISABILITY - (SPECIAL EARLY)
( ) DEFERRED VESTED PENSION - Upon attaining age 65
( ) EARLY RETIREMENT - with payment commencing ( ) at once ( ) at age 65
(X) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 30.5 years credited service X $6.75 X Applicable Reduction Factor none $205.88

2. Supplemental allowance $400 (Subject to Reduction):
   a. Number of months service is less than 30 years: (0) $400 - (0 X 1.111) = $400.00
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 _____ X Line 2a (Sec. 6.15 (b)(7)) = $------
   c. 121.33 X base hourly rate $4.40 = $533.85
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $400.00
4. Total Supplement (line 3 - line 1) = $194.12
5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)): _____ years X $7.50 (not to exceed $187.50)(whether or not payable) $--------
6. Supplement (line 4 _____) less Special T&P Temporary benefit (Sec. 6.15(c)) $--------
7. Total Supplemental Allowance payable $194.12
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is 2 years in excess of 5 years older-~~younger~~ than spouse
   b. 2 years (line 8a) X 1/2% equals~~xxxx~~-minus 1 %
   c. 95% ~~plus~~-minus 1 % equals 94 % adjustment factor
9. Monthly benefit (line 1) adjusted for option: $205.88 X 94 % (Line 8c) $193.53
10. Surviving Spouse Benefit - 55% of line 9 = $106.44
11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $387.65

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 4/18/72 Employee Signature Alfred H Behrendt

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $193.53 as shown in item 9 above, and temporary benefits of $194.12, as shown in item 7 above, to commence as of May 1, 1972.

F M Boos
Pension Committee - Employer Representative
Date 4/18/72

Clifford L Swoboda
Pension Committee - Employee Representative
Date 4-18-72

EXHIBIT A

MINNEAPOLIS-MOLINE
Division of White Motor Corporation • HOPKINS, MINNESOTA 55343
612/935-5101

May 10, 1972

Mr. Alfred H. Behrendt
2828 Portland Avenue South
Apt. 202
Minneapolis, Minnesota 55407

Dear Mr. Behrendt:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $193.53, plus a supplemental allowance of $194.12 for a total of $387.65 effective May 1, 1972. The supplemental allowance will be terminated as of May 31, 1975 and on June 1, 1975 your regular monthly pension benefit will be $193.53 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 214235 in the amount of $377.65* covering the month of May, 1972. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,

J. E. Tuohey, Manager
Employee Relations

* $10.00 Federal Tax per your request.

JET/mj
Attachment

cc: Local 932 Pension Committee
F.M. Boos - L.S. Personnel

AFFIDAVIT OF SPENCER WESTERBERG WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF SPENCER WESTERBERG

Mr. Spencer Westerberg, being first duly sworn on oath, deposes and says:

1. I am now 60 years old.

2. I was an electrician for Minneapolis Moline for 35 years.

3. I began work at Minneapolis Moline on April 25, 1935, and retired on December 1, 1970, at age 56.

4. At the time I retired my salary was about $9,000 yearly.

5. Shortly after I received my first pension check I got a letter from Mr. Tuohey, benefits manager of the company, confirming that my full pension benefits would be $338.10 a month which included a monthly special early retirement benefit of $150. The early retirement benefit was to be terminated on November 30, 1979, when I will be 65. A true and correct copy of the letter from Mr. Tuohey, dated February 17, 1971, is attached hereto as Exhibit A.

6. My full pension benefits were later raised to $378.78 monthly under the foundry agreement.

7. I received my full monthly pension benefits until August of 1972 at which time my special early retirement supplement was discontinued and my regular monthly pension benefit was cut back to $175.00. In October of 1973 I began receiving my full pension benefits again.

8. I wasn't surprised when I got the cutback because I always understood the pension was not fully funded and that our pensions were dependent upon the solvency of the company. I knew we were in trouble when White Motor came in because we had the UAW look up White Motor's record. At

that time White Motor had bought approximately 20 small companies and closed down most of them and transferred the work to other places. I figured that they intended to do the same with Minneapolis Moline.

9. Of course the rank and file were not aware of any of this. I know that the average worker at Minneapolis Moline trusted everybody and believed what the company told them. Their attitude was that the company would do the best by them. I know that most of the workers thought that the pension plan was fully funded and that their pension benefits were guaranteed. I knew what was really going on because I had held various leadership positions in the UE and for a time in the UAW. I was always particularly concerned about the pension agreements and myself and some others attempted at various time to get some straight information from the company and from the UAW about the terms of our pension agreement and plan. At one point we even called a meeting with MPIRG, the local Nader group, to enlist their aid in the effort to find out the provisions of the pension agreement and plan.

10. Right now I'm receiving my full pension benefit of $378.78 monthly. That includes my special early retirement allowance which I should receive for another four years. However, it is my understanding that the pension fund will run out shortly and we'll all be cut back to the guarantee level. This means I will lose my supplement and my regular pension will be cut back. However, I'm not sure what it will be cut back to as there seems to be some confusion in my case. I would guess that it will be less than $100 a month as that's what the guarantee level seems to be for everyone else who worked at the foundry.

11. Right now I have a job as a checking receiver with a small company in Bloomington. It doesn't pay very much but it's physically easy work. My job at the foundry was hard work and I'm too old now to do that kind of work. My plan was to keep the checking receiver job till age 62 and then quit working and live off of my pension benefits and social security. Now that my pension benefits will be cut back to probably under $100 a month I won't be able to quit working at age 62 as I had planned. I should even look for a higher paying job but I don't feel I can do physically strenuous work anymore.

FURTHER AFFIANT SAYETH NOT.

SPENCER WESTERBERG

Subscribed and sworn to me this 13th day of November, 1975. Henry Baron, Notary Public, Hennepin County, Minnesota. My Comm. Expires Nov. 14, 1980.

WHITE FARM EQUIPMENT
A SUBSIDIARY OF WHITE MOTOR CORPORATION
HOPKINS, MINNESOTA 55343 • 612/935-5101

February 17, 1971

Mr. Spencer B. Westerberg
6809 Newton Avenue South
Richfield, Minnesota 55423

Dear Mr. Westerberg:

We believe that you have already received your first pension check or checks, mailed to you directly from The Chase Manhattan Bank.

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $188.10, plus a special early allowance of $150.00 for a total of $338.10 effective December 1, 1970. The special early allowance will be terminated as of November 30, 1979 and on December 1, 1979 your regular monthly pension benefit will be $188.10 plus reimbursement for Medicare.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,

J. E. Tuohey
Benefits Manager

JET/mj
Attachment

cc: Local 932 Pension Committee
F. M. Boos - L. S. Personnel

EXHIBIT A

AFFIDAVIT OF CHARLES G. DAPPER WITH EXHIBITS A & B ATTACHED

(Caption)

AFFIDAVIT OF CHARLES G. DAPPER

Mr. Charles G. Dapper, being first duly sworn on oath, deposes and says:

1. I am now 59 years old. I currently reside at 4338 Logan Avenue North, Minneapolis.

2. I was a timekeeper for Minneapolis Moline for approximately 33 years. I am presently retired.

3. I started working at Minneapolis Moline April 7, 1937, and retired February 1, 1973, when I was 56 years old.

4. At the time I retired my salary was about $9,000 a year.

5. After I retired I got a letter from the company informing me that I would be getting my full pension benefits of $237.62 a month which included a monthly early retirement supplement of about $67.00. It was my understanding that I'd be getting my regular pension benefits for life and my supplemental benefits until I reached age 65. A true and correct copy of this letter dated March 6, 1973, is attached hereto as Exhibit A.

6. I received my full monthly benefit of $237.62 until 1974 when I was assessed a penalty against future supplemental allowances. I was informed of this penalty by letter dated March 5, 1974, from Mr. Tuohey of the company. A true and correct copy of that letter is attached hereto as Exhibit B. Apparently to be eligible for the supplemental benefits a retired employee must agree to limit his earnings after retirement and I seemed to have earned too much during 1973.

7. I am therefore currently receiving only my regular pension benefit which should be $170.60 according to the letter I received when I retired but which is instead only $153.54.

I don't understand why my regular benefit has been reduced.

8. I understand that soon my regular pension benefit will be cut to $69.58 a month.

9. I don't understand how the company can cut back our regular pension benefits at all. I always thought that all of my regular pension benefits were guaranteed to me for life. After thirty years of working for Minneapolis Moline I thought that I had built up security for my retirement.

10. If my pension benefits are cut back to $69.58 a month my wife and I will probably have to go on welfare and we will lose our home. Right now our sole source of income is my pension benefits. I won't get any social security for another couple years and my wife has never worked. I have monthly mortgage payments alone of $114.00. The utility bills for my home come to about $50 a month and food costs us about $80 a month. My wife has had to have twenty four cobalt treatments for cancer. These treatments were done on an out-patient basis and the company medical plan does not pay for outpatient services. Therefore, I had to pay the full $1,000 bill for these treatments out of my own pocket. All of these expenses have almost wiped out my savings. I think that my savings will last at the most another year. Any cutback in my pension benefits will be catastrophic for my wife and I.

FURTHER AFFIANT SAYETH NOT.

CHARLES G. DAPPER

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY PENSION BENEFITS
Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P, Special Early, Spouse Option

Name	Social Security No.	Pension Unit	Date of Hire
Charles G. Dapper	473-10-1484	1147	4-6-37 1937

Address	Date of Birth	Age	Service Termination Date	Credited Service
4338 Logan Ave. South	5-12-16	56-7	6-30-72	34

City State Zip Code	Last Day Worked	Retirement Date
Minneapolis, Mn. 55412	6-30-72	2-1-73

CLASSIFICATION OF RETIREMENT BENEFIT:
( ) NORMAL RETIREMENT
( ) T&P DISABILITY - (SPECIAL EARLY)
( ) DEFERRED VESTED PENSION - Upon attaining age 65
XXX EARLY RETIREMENT - with payment commencing XXX at once ( ) at age 65
( ) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 34 years credited service X $7.50 X Applicable Reduction Factor 66.9 ($255.00) $170.60
2. Supplemental allowance $400 (Subject to Reduction):
   a. Number of months service is less than 30 years: (___) $400 - (____ X 1.111) = $400.00
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 594059 X line 2a (Sec. 6.15 (b)(2)) = $237.62
   c. 121.33 X base hourly rate $_____ = $_____
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $237.62
4. Total Supplement (line 3 - line 1) = $67.02
5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)): _____ years X $7.50 (not to exceed $187.50)(whether or not payable) $_____
6. Supplement (line 4 _____) less Special T&P Temporary benefit (Sec. 6.15(c)) $_____
7. Total Supplemental Allowance payable $67.02
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is _____ years in excess of 5 years older-younger than spouse
   b. _____ years (line 8a) X 1/2% equals plus-minus _____%
   c. 95% plus-minus _____% equals _____% adjustment factor
9. Monthly benefit (line 1) adjusted for option: $_____ X _____% (line 8c) $_____
10. Surviving Spouse Benefit - 55% of line 9 = $_____
11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $237.62

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 1-31-73 Employee Signature Charles G. Dapper

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $_____ as shown in item _ above, and temporary benefits of $_____, as shown in item 7 above, to commence as of _____.

Pension Committee - Employer Representative
Date _____

Pension Committee - Employee Representative
Date 3/6/73

EXHIBIT A

A-53

WHITE MOBILIFT

White Materials Handling Division WHITE MOTOR CORPORATION
HOPKINS, MINNESOTA 55343 PHONE 612 • 935-2171

March 5, 1974

To: Charles Dapper

Section 6.15 of the Pension Plan provides that, to be eligible for Supplemental Allowance payments, a retired employee must have agreed to restrict his participation in the labor force within the earnings limit of the then applicable Federal Social Security Act and that if earnings after retirement in any calendar year are in excess of the amount permitted under the then current Federal Social Security Act, penalties equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding Supplemental Allowance until the full amount of such penalty is satisfied.

By our letter of February 4, 1974 we requested information regarding your earnings during the calendar year 1973 and you have responded by reporting earnings of $ [illegible]. This establishes a penalty of $ 1,316.66 against future Supplemental Allowance. Unsatisfied penalties based on 1972 earnings are in the amount of $ - 0 -, making a total outstanding penalty at this time of $ 1,316.66.

The enclosed pension check, therefore, includes no Supplemental Allowance and no future Supplemental Allowance will be payable until the above penalties, plus any penalties for earnings in future years have been satisfied. In addition, of course, you understand that no Supplemental Allowance is payable after age 65 in any case.

If you have any questions concerning the above, please let me know.

Sincerely,

JET/jss

J.E. Tuohey, Manager
Compensation & Benefits

EXHIBIT B

A-54

AFFIDAVIT OF CLARENCE GROSE WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF CLARENCE GROSE

Mr. Clarence Grose, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 2910 Russel Avenue North, Minneapolis.

2. I was a machine operator for Minneapolis Moline for 29 years. At present I am retired.

3. I started working at Minneapolis Moline November 5, 1942, and retired February 20, 1972, when I was 62 years old.

4. At the time I retired my salary was about $10,000 per year.

5. When I retired I got a letter from the company informing me that I would be getting my full pension benefits of $371.99 per month which included a monthly early retirement supplement of about $190.00. It was my understanding that I would receive a total of $371.99 a month in benefits until age 65. After age 65 I was then to get my full regular pension benefit of $181.07 for the rest of my life. A true and correct copy of the letter which I received from the company at the time I retired is attached hereto as Exhibit A.

6. I received my full $371.99 monthly benefits for about six months. Thereafter for a period of a little over a year I received only $90 per month. This figure reflects a discontinuation of my supplemental benefits and a cutback of my regular pension benefits from $187.07 to $90.

7. The pension cutback came as a complete shock to me. I always thought that our pension agreement with the company guaranteed us our full pensions. We were to receive these pension benefits in lieu of wages. I never thought that the

company could take any of our pension monies away from us.

8. Since I never thought that the pension could be reduced I didn't make any arrangements to save in other ways except that I saved a little through the credit union.

9. I am currently receiving my full regular pension of about $180.00 a month. My supplemental pension benefits were discontinued when I reached age 65. Now I understand that my regular pension benefits will again by cut to $90 a month. When that happens it isn't going to be easy for my family to get by.

10. I am supporting my wife and four children on just what I take home from my part-time job which comes to about $160 monthly, my social security which comes to about $460.00 monthly and my $180 monthly pension benefits. I have two children who are still in high school and one in junior high. I'm trying to put my eldest child through college at St. Cloud State. It costs me about $2,000 a year to put her through college and she works part time to help out. I am also making mortgage payments on my home, which come to about $100 each month. When my pension gets cut back to $90 a month it's going to make it more difficult for me to meet these obligations. We will probably have to change something but I don't know what. I would hate to ask my eldest child to give up college but I have to think of the whole family.

CLARENCE GROSE

Subscribed and sworn to before me this 13th day of November, 1975. Henry Baron, Notary Public, Hennepin County, Minnesota. My Comm. Expires Nov. 14, 1980.

MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY PENSION BENEFITS
Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P, Special Early, Spouse Option

Clarence W. Grose Name	473-10-1761 Social Security No.	932 Pension Unit	11/5/42 Date of Hire
1616 Emerson Ave. No. Address	2/20/10 — 61 Date of Birth — Age	1/31/72 Service Termination Date	29 Credited Service
Mpls., Minn. 55411 City State Zip Code	1/31/72 Last Day Worked	1/31/72 Retirement Date	

CLASSIFICATION OF RETIREMENT BENEFIT:
( ) NORMAL RETIREMENT
( ) T&P DISABILITY - (SPECIAL EARLY)
( ) DEFERRED VESTED PENSION - Upon attaining age 65
( ) EARLY RETIREMENT - with payment commencing ( ) at once ( ) at age 65
(x) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 29 years credited service X $6.75 X Applicable Reduction Factor - - - - - - = $195.75
2. Supplemental allowance $400 (Subject to Reduction):
   a. Number of months service is less than 30 years: (12 $400 - (12 X 1.111) = $386.67
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 - - - X Line 2a (Sec. 6.15 (b)(2)) = $- - - -
   c. 121.33 X base hourly rate $3.65 = $442.85
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $386.67
4. Total Supplement (line 2 - line 1) = $190.92
5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)):
   - - years X $7.50 (not to exceed $187.50)(whether or not payable) $------
6. Supplement (line 4 ---) less Special T&P Temporary benefit (Sec. 6.15(c)) $--------
7. Total Supplemental Allowance payable $190.92
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is 5 years in excess of 5 years older-~~younger~~ than spouse
   b. 5 years (line 8a) X 1/2% equals plus-minus 2.5%
   c. 95% ~~plus~~-minus 2.5% equals 92.5% adjustment factor
9. Monthly benefit (line 1) adjusted for option: $195.75 X 92.5% (Line 8c) $181.07
10. Surviving Spouse Benefit - 55% of line 9 = $99.59
11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $371.99

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 1-19-72 Employee Signature Clarence W Grose

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $181.07 as shown in item 9 above, and temporary benefits of $190.92, as shown in item 7 above, to commence as of February 1, 1972.

Pension Committee - Employer Representative
Date 1/19/72

Pension Committee - Employee Representative
Date 1-19-72

EXHIBIT A

A-58

AFFIDAVIT OF ROY G. PIERCE WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF ROY G. PIERCE

Mr. Roy G. Pierce, being first duly sworn on oath, deposes and says:

1. I am now 70 years old. I currently reside at 2811 East 28th Street, Minneapolis.

2. I was a security guard for Minneapolis Moline for approximately 27 years.

3. I started working at Minneapolis Moline on August 3, 1942, and retired on October 1, 1969, when I was 64 years old.

4. At the time I retired my salary was about $7,000 a year.

5. At the time I retired I received a statement from the company informing me that I would be getting my full pension benefits of $332.18 a month which included a monthly early retirement supplement of $211.40. It was my understanding that I'd be getting my regular monthly pension benefit of $120.78 for life and my supplemental benefit of $211.40 until I reached age 65. A true and correct copy of this statement dated September 15, 1969, is attached hereto as Exhibit A.

6. From October 1, 1969, to September 30, 1970, I received my full pension benefit of $332.18.

7. On September 30, 1970, my supplemental benefit was discontinued as I had reached age 65.

8. A recalculation of benefits made in 1970 increased my regular pension to $154.38. Thereafter, I received my full regular pension benefit of $154.38 until August of 1972 at which time I was cut back to $74.00 a month. I received only $74.00 a month for a little over a year and then I started getting my full regular pension benefit again.

9. It took me by complete surprise when my regular pension benefit was cut back. As I understood the pension agreement and plan I was supposed to get my full regular pension for the rest of my life. I felt that the amount I was receiving should never be reduced.

10. The pension meant everything to me and I never thought anything could be done to take it away from me. It was part of my salary and I had earned it. I didn't make any other investments or arrangements for saving.

11. My current monthly pension benefit is $154.38. It will soon be reduced, I understand, to $74.00. I'm afraid that with my wife's and my illness we won't be able to make it if the pension is reduced to this amount. My wife has had heart trouble, arthritis and diabetes. I have heart trouble and stomach problems. I have had part of my stomach removed. The problem is that social security only pays about 80 percent of the medical bills and the medical insurance from White does not pay for outpatient care of office calls. If our health doesn't get worse we may be able to make it without selling our home. However, if we have more medical problems we may have to get some help from welfare.

FURTHER AFFIANT SAYETH NOT.

ROY G. PIERCE

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

MINNEAPOLIS-MOLINE — World's Finest Tractors

AUTHORIZATION OF MONTHLY PENSION BENEFITS
Pension Plan for Hourly Employees - Supplemental Allowance

Roy C. Pierce (Name)	476-07-5900 ^ (Social Security Number)	Non-Union (Pension Unit)	8-3-42 ^ (Date of Hire)
2811 E. 28th St. (Address)	9-23-05 ^ (Date of Birth) 64 (Age)	10-1-69 (Service Termination Date)	26.75 (Credited Service)
Minneapolis, Mn. 55406 (City State Zip Code)	2-28-69 (Last Day Worked)	10-1-69 (Retirement Date)	

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) NORMAL RETIREMENT
( ) SPECIAL EARLY
( ) DEFERRED VESTED PENSION - Upon attaining Age 65
( ) EARLY RETIREMENT - with payment commencing ( ) At once ( ) At Age 65
(X) SUPPLEMENTAL ALLOWANCE

1. Years of service at termination (Art.IV)	26.75	
2. Monthly benefit: 26.75 years (line 1) x $	5.25	$ 140.44 ^
3. Supplemental allowance ($400 minus line 2 $	140.44)	$ 259.56 ^
4. Adjustment if service is less than 30 years: No.of months less than 30 years 39 ^ x $1.111		$ 43.33 ^
5. Adjusted supplemental allowance (line 3 minus line 4)		$ 216.23 ^
6. Total benefit (line 2 plus line 3 or line 5 if less than 30 years service)		$ 356.67
7. 4-1/3 x Base hourly rate $ 2.90 x 40 x 70%	$ 352.84 ^	
8. If line 6 exceeds line 7 reduce supplemental allowance by excess		$ 211.40
9. Actuarial adjustment for option, if selected, applicable to line 2 only (Sec.6.13):		
a. Employee is 6 ^ years older-younger than spouse		
b. 8 years (line 9a) x 1/2% equals plus-minus 4 %		
c. 90% plus-minus 4 % equals 86 % adjustment factor		
10. Monthly benefit (line 2) adjusted for option: $140.44 line 2 x 86 ^% (line 9c)		$ 120.78 ^
11. Monthly benefit payable to age 65 (line 2 or line 10 plus line 3 or line 5 minus line 8)		$ 332.18 ^

I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under Social Security Act, my benefits will cease and in certain instances I could be penalized. (See Sec.6.15(d).) I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 9-15-69 Employee's Signature Roy G. Pierce

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $ 120.78, as shown item 9 above, and temporary benefits of $ 211.40, as shown item 11 above, to commence as of 10-1-69.

E H-e Scahd
Pension Committee-Employer Representative
Date 9-15-69

Pension Committee-Employee Representative
Date

TO: THE CHASE MANHATTAN BANK, Trustee
In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

10/13/69
Date

Authorized Representative-MINNEAPOLIS-MOLINE, INC.
Pension Plan for Hourly Employees

EXHIBIT A

AFFIDAVIT OF WILLIAM E. PETERS
WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF WILLIAM E. PETERS

Mr. William E. Peters, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 405 East 104th Street, Minneapolis.

2. I was a timekeeper and production control clerk for Minneapolis Moline for 30 years. At present I am retired.

3. I started working at Minneapolis Moline February 7, 1941; and retired May 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about $9,500 a year.

5. When I retired I got a letter from Mr. Tuohey of the company saying I would be getting my full pension benefits of $392.11 a month which included a monthly early retirement supplement of about $242.16. The supplement was to be terminated on November 30, 1975, and on December 1, 1975, I was to be receiving my regular monthly pension benefit of $149.95. A true and correct copy of the letter from Mr. Tuohey is attached hereto as Exhibit A. That letter was the summation of a binding contract as far as I was concerned—a contract giving me a retirement income for life.

6. I received the full $392.11 for a little over one year at which time my supplemental benefits were discontinued and my regular pension benefit was cut to $78.41 a month. About one year later I started receiving my full pension benefits again.

7. I never thought that there was any point at which the company could take any of our pension benefits away from us. I've been pretty active in the union and I think I've always understood the provisions of our contracts generally and the things that we bargained for. It was always my understanding that our pension benefits were guaranteed. I just didn't

ever feel the company could take any of our pension benefits away from us.

8. After I had worked for the company for about fifteen years I never even considered leaving because I didn't want to lose my pension benefits. I felt that I had been building on something my whole life and my whole life plan was built around that retirement income prospect. If we hadn't had the pension agreement I would have tried to save in another way. I relied very heavily on getting my full pension benefits for life. I didn't even consider purchasing an annuity because I didn't think it was necessary since I had the pension. If I had known that the company could take our pension benefits away I would have pushed to get higher wages instead of the pension agreement.

9. I now receive my pension benefits of $392.11 but my supplemental benefits will be discontinued at the end of this month. At that time I will receive my regular pension benefit of $149.95.

10. When my pension benefits are cut again to $78.71 a month I'll have to get some sort of work if I can. However, that will be difficult because I have a hip injury and I can't work long hours. Yet, I don't think my wife and I can get by on just our monthly social security checks and a $78.71 monthly pension benefit. I am fortunate that my car payments and house mortgage are paid up or I would really be in trouble. But it seems to me that in your retirement years a person should be able to look forward to a trip or two and some recreation rather than having to worry about finding a part time job and making ends meet. I feel that I've earned at least that.

WILLIAM E. PETERS

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

WHITE FARM EQUIPMENT
A SUBSIDIARY OF WHITE MOTOR CORPORATION
HOPKINS, MINNESOTA 55343 • 612/935-5181

May 13, 1971

Mr. William E. Peters
513 E. Old Shakopee Road
Bloomington, Minnesota 55420

Dear Mr. Peters:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $149.95, plus a supplemental allowance of $242.16 for a total of $392.11 effective May 1, 1971. The supplemental allowance will be terminated as of November 30, 1975 and on December 1, 1975 your regular monthly pension benefit will be $149.95 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 202096 in the amount of $392.11 covering the month of May, 1971. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,

J. E. Tuohey
Employee Relations Manager

JET/mj
Attachment

cc: Local 1147 Pensio: Committee
F.M. Boos - L. S. Personnel

EXHIBIT A

A-66

AFFIDAVIT OF EMANUEL WALSTROM WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF EMANUEL WALSTROM

Mr. Emanuel Walstrom, being first duly sworn on oath, deposes and says:

1. I am now 63 years old. I presently reside at 3037 30th Avenue South, Minneapolis.

2. I worked for Minneapolis Moline for about 25 years as a machine loader leadman and in production control. I am now retired.

3. I started working at Minneapolis Moline May 18, 1945, and retired in September of 1973, when I was 61 years old.

4. At the time I retired my salary was about $10,000 yearly.

5. When I retired I received a form from the company stating that I would be getting my full pension benefits of $366.67 a month which included a monthly early retirement supplement of about $186.00. I can't really understand why the company gave me the information that my full monthly benefits would be $366.67 when they knew at the time that I would soon be cut to about $90.00 a month. Yet, they didn't even mention the cutback in the forms which I received. A true and correct copy of the form I received from the company when I retired is attached hereto as Exhibit A.

6. I am presently receiving my full monthly pension benefit of $366.67 which includes my early retirement supplement of $186.00. When I am cut to the guarantee letter level my regular pension will be reduced to about $90.00 a month. I will also lose my supplemental benefit which I would otherwise get for two more years.

7. I have been very active in the union. As the president of Local 1147 for fifteen years I often participated in contract negotiations. It was always my understanding that our pension was fully funded by the company. The first time I learned that the fund was low was at the hearing conducted by Senator Mondale in June, 1972.

8. In anticipation of the reduction of my pension benefits to about $90 a month, my family has changed its life style quite a bit. My wife has gone back to work at age 55 which I don't feel is right. My son has had to quit college with less than one year left. I don't feel I can afford to support him through college any more. I have a 14 year old daughter to support and educate and a home to maintain and with inflation the way it is I'm frankly very worried about the future. I think that after the cut in my pension is put into effect I will still be able to stay off of welfare as long as I don't have any large unexpected expenses such as medical bills. I have ulcers and have already had three treatments for blood clots and vein surgery.

EMANUEL WALSTROM

Subscribed and sworn to before me this 13th day of November, 1976. Henry Baron, Notary Public, Hennepin County, Minnesota My Comm. Expires Nov. 14, 1980.

Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P, Special Early, Spouse Option

Emanuel V. Walstrom (Name)	476-26-6418 (Social Security No.)	1147 (Pension Unit)	5-18-45 (Date of Hire)
3037-30th Ave. S. (Address)	3-12-12 (Date of Birth) 61-7 (Age)	3-16-73 (Service Termination Date)	28 17.5 (Credited Service)
Minneapolis, Mn. 55406 (City State Zip Code)	3-12-73 (Last Day Worked)	10-1-73 (Retirement Date)	

CLASSIFICATION OF RETIREMENT BENEFIT:
( ) NORMAL RETIREMENT
( ) T&P DISABILITY - (SPECIAL EARLY)
( ) DEFERRED VESTED PENSION - Upon attaining age 65 5-1-71 $3.97
XXX EARLY RETIREMENT - with payment commencing (X) at once 10-1-73 ( ) at age 65
( ) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 28 17.5 years credited service X $7.50 X Applicable Reduction Factor 97.2 = $204.12
2. Supplemental allowance $400 (Subject to Reduction): 30 $450 - (24 X 1.25) = $420.00
   a. Number of months service is less than 30 years: (24) 4480 - (24 X 1.111) = $420.00
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 ____ X Line 2a (Sec. 6.15 (b)(2)) = $420.00
   c. 121.33 X base hourly rate $:____ = $____
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $420.00
4. Total Supplement (line 3 - line 1) = $215.88
5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)): ____ years X $7.50 (not to exceed $187.50)(whether or not payable) $____
6. Supplement (line 4 ____) less Special T&P Temporary benefit (Sec. 6.15(c)) $____
7. Total Supplemental Allowance payable $215.88
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is ____ years in excess of 5 years older-younger than spouse
   b. ____ years (line 8a) X 1/2% equals plus-minus ____%
   c. 95% plus-minus ____% equals ____% adjustment factor
9. Monthly benefit (line 1) adjusted for option: $____ X ____% (line 8c) $____
10. Surviving Spouse Benefit - 55% of line 9 = $____
11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $420.00

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date ____ Employee Signature Emanuel V. Walstrom

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $204.12 as shown in item above, and temporary benefits of $215.88, as shown in item 7 above, to commence as of 10-1-73.

Pension Committee - Employer Representative
Date ____

Pension Committee - Employee Representative
Date ____

EXHIBIT A

AFFIDAVIT OF WILLIAM PRESTON WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF WILLIAM PRESTON

Mr. William Preston, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3941 Pillsbury, Minneapolis.

2. I was employed by Minneapolis Moline for about 30 years as a machine operator and in the inspection department. At present I am retired and unemployed.

3. I began work at Minneapolis Moline December 2, 1940, and retired March 31, 1971, at which time I was 57 years old.

4. At the time I retired my salary was about $8,000 a year.

5. When I retired I started receiving my full pension benefit of $172.50 a month. A true and correct copy of the letter which the company gave me when I retired explaining that I would be receiving $172.50 monthly benefits is attached hereto. Later that amount was raised to $187.50 pursuant to the pension plan.

6. I received my full pension benefits for about one and a half years and then my benefits got cut back to $90 a month. I received only $90 a month in pension benefits for about another year. After that I again started receiving my full benefits of $187.50.

7. I had been an officer in the union (IUE) in various capacities until 1954. Although I was never directly involved in negotiations I thought I knew the pension plan as well as anyone. I thought we were improving our station in life by sacrificing part of our paycheck — so much per hour — towards our pensions. In no way did I ever think that any of these pen-

sion benefits could be taken away from me. I thought these benefits were guaranteed for life.

8. If I had thought that I might not be getting my full pension benefits I would have taken my father's advice and taken out an annuity.

9. Now I receive my full pension benefits of $187.50 a month. I understand that my benefits will again be cut back to $90. I don't know what I'll do when that happens. Right now my wife and I are just barely getting by at the full benefit level. I receive $273.10 from social security and she receives $183.10. My wife and I live completely on our social security and my pension benefits. We have no other income. I figure right now that it costs us about $300 a month just for bare necessities. This doesn't include transportation, clothing and social activities. If I have to make any major repairs on my house or have any other unexpected expenses I will be in trouble. Also we have been trying to save some money but we haven't been able to save much at all. With inflation the way it is we are worried that our income, even as it is now, won't be enough to live on soon.

FURTHER AFFIANT SAYETH NOT.

WILLIAM PRESTON

Subscribed and sworn to before me this 13th day of November, 1975. Harry Baron, Notary Public, Hennepin County, Minnesota. My Comm. Expires Nov. 14, 1980.

MINNEAPOLIS-MOLINE — World's Finest Tractors

AUTHORIZATION OF MONTHLY DISABILITY PENSION BENEFITS
Pension Plan for Hourly Employees (Form 3)

Name	Social Security Number	Pension Unit	Date of Hire
William B. Preston	475-03-1720	932	12/2/40
Address	**Date of Birth**	**Age**	**Service Termination Date**
3941 Pillsbury Ave. So.	8/22/13	57	3/31/71
City State Zip Code	**Last Day Worked**		**Retirement Date**
Mpls., Minn. 55409	3/20/70		4/1/71

TOTAL AND PERMANENT DISABILITY PENSION BENEFIT:
1. Date of Proof of Disability received by the Pension Committee 3/20/70
2. First day of total and permanent disability 3/21/70
3. First day of total and permanent disability benefits 3/21/71
4. Years of credited service 30 (Sec. 4.01)
5. Monthly retirement benefit prior to Age 65: and/or while ineligible for unreduced Social Security benefits.
   a. Gross monthly retirement benefit: 30 yrs. (line 4) x $5.75 = $172.50
   b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) _____ $_____
   c. Additional temporary benefits: (Sec.6.04(c)(ii)) ___ yrs.(line 4) x $_____ = $_____
   d. Monthly disability retirement benefit from Plan $_____
6. Monthly retirement benefit after Age 65: or when eligible for unreduced Social Security benefits.
   a. Gross monthly retirement benefit: ___ yrs. (line 4) x $_____ = $_____
   b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) _____ $_____
   c. Monthly disability retirement benefit from Plan $172.50

I hereby certify that the data used in the calculation of the MONTHLY DISABILITY RETIREMENT BENEFITS are as shown on our records and that the calculation of such benefit as shown in line 5 and d and/or line 6c is correct.

3- _____ _____
Date Personnel Department - Minneapolis-Moline, Inc.

I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct.

3-10-71 William B Preston
Date Employee's Signature

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $ 172.50 , as shown in line 5d and/or 6c above, and temporary benefits of $ none as shown in item 5c above, to commence as of April 1, 1971 The monthly pension above shown shall be payable during lifetime until Age 65 at which age a re-determination shall be made in accordance wi provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees, Sec. 6.04.

X _____ X _____
Pension Committee - Employer Representative Pension Committee - Employee Representative

_____ 3-10-71
Date Date

TO: CHASE MANHATTAN BANK, Trustee
In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

_____ _____
Date Authorized Representative-MINNEAPOLIS-MOLINE, INC
Pension Plan for Hourly Employees

EXHIBIT A

(Caption)

AFFIDAVIT OF MILDRED MacDONALD

Mrs. Mildred MacDonald, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3832 29th Avenue South, Minneapolis.

2. My husband, George MacDonald, worked for Minneapolis Moline in the parts department and on the assembly line for about 42 years. He retired in May of 1972 at age 60.

3. My husband died on November 7, 1972.

4. At the time he retired his salary was about $8,000 a year.

5. When my husband retired he began receiving his full monthly pension benefits of about $185.00. In the summer of 1972 those benefits were drastically cut. I can't remember the exact figure his benefits were cut to but I think it was around $75 or $80.

6. When my husband died I was supposed to receive $103.37 a month in widow's benefits. The reason I was to receive these benefits was because my husband had elected to have his monthly pension benefit reduced so that I could receive some benefits after he died. However, after my husband died I only received $43.00 a month till the next spring or summer.

7. My husband and I had never thought that we would not receive his full pension benefits and my full widow's benefits. We really relied on these pension benefits. Had we known that these pension benefits were not ours for sure we would certainly have made other investments and saved in other ways. Shortly before my husband's benefits were cut we took out a mortgage on our house and used part of that loan to purchase

a small dry cleaning business. We thought it would help me get by if something happened to him.

8. I wish now that my husband had taken my advice and switched to a civil service job because there is more security in those jobs. However, in later years he wouldn't consider leaving Minneapolis Moline because of his seniority and pension benefits.

9. Now I receive $103.37 monthly as my widow's pension benefit. If I am cut back to $40 per month it will create a real financial crisis for me. I have a twenty-six year old son whom I must support because he is emotionally disturbed. I get no help from the state to support him and I hope I can continue to support my son and myself in the future. However, my dry clearning business is not doing well. Some months last year, due to various expenses, I didn't take anything home from the business. The most I took home in any month was $200. I do get my social security of $222.10 a month but I also have about $100 a month monthly mortgage payments to make. I'm just not sure how I'll get by when my widow's pension benefits are cut.

FURTHER AFFIANT SAYETH NOT.

MILDRED MacDONALD

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

AFFIDAVIT OF DONALD W. DUFFY WITH EXHIBIT A ATTACHED

(Caption)

AFFIDAVIT OF DONALD W. DUFFY

Mr. Donald W. Duffy, being first duly sworn on oath, deposes and says:

1. I am now 64 years old. I presently reside at 3551 Irving Avenue, North, Minneapolis.

2. I was a machine operator and gear cutter for Minneapolis Moline for 36 years but I'm presently retired and unemployed.

3. I started working at Minneapolis Moline March 8, 1935, and retired October 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about $10,000.

5. When I retired I got a sheet from the company saying I would be getting my full pension benefits of $400 a month which included a monthly early retirement supplement of about $200. I also talked with a Mr. Voss or Foss from the company who explained how my pension benefits were culculated. He also told me I would be getting total $400 monthly benefits. After that I thought I'd be getting these pension benefits for life except for supplemental benefits which I would get only until I reached 65 in 1976. A true and correct copy of the sheet which I received from the company when I retired is attached hereto as Exhibit A.

6. I did get the full $400 monthly benefit for almost a year at which time the supplemental benefits were discontinued and my regular pension benefit got cut back to $83 a month. I received only $83 a month in pension benefits for about a year. During that time I used up about half of my savings in order to get by.

7. I always thought that these pension benefits were going to be mine no matter what. I never thought that the company might take these benefits away from me.

8. Had I known that these benefits were not guaranteed I might have quit the company and gone to work somewhere else. During the last three years of my employment there, I was ready to quit any time because working conditions were rotten. However, I thought of my pension and decided to stick by my job there. I had too much seniority built up to give it up at that time of my life.

9. In 1969 or 1970 I had a chance to go to a gear shop in St. Cloud. That shop contacted several fellows at the plant through the recommendation of another gear man, Lane, I believe. I turned them down because of the pension benefits I anticipated receiving. I don't remember the name of the shop but I understand that they are now cutting gears for White Motor Company.

10. I now receive $400 a month pension benefits from the Company. My supplemental benefits of about $200 will be discontinued in due course. Now I understand that my regular pension benefits of about $200 will again soon be cut to $83 a month. When my pension benefits get cut to $83 a month, I will have to sell my lake cabin. Selling my lake cabin would be a real tragedy for me because it is so much a part of my life. It's really like a second home. Fifteen other men who I have worked with all my life also own cabins in the area. But even more important to me, my boys and my grandchildren love the place the spend a lot of time there. If I had to sell the cabin I would not get to see my family that often. Really our family life revolves around that cabin. If I sold the cabin, my wife and I could probably get by if she continued to work. Right

now she works full time. She takes home about $400 a month and I get $244 a month from social security. I think if my pension benefits were reduced to $83 a month, we could get by if I sold the cabin and if my wife can continue to work full time.

FURTHER AFFIANT SAYETH NOT.

Dated: 11-7-75.

DONALD W. DUFFY

Subscribed and sworn to me this 7th day of Nov. 1975. — R. J. Knutson, Notary Public.

FORM 3363
1-1-68

MINNEAPOLIS-MOLINE — World's Finest Tractors

APPLICATION FOR A PENSION BENEFIT
AND ELECTION OF MONTHLY PENSION OPTION
Pension Plan for Hourly Employees (Form 1)

Employee's Name	Clock No.	Social Security No.	Pension Unit
Donald W. Duffy	1012	468-07-8420	932

A. I hereby make application for a pension benefit under the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees as follows:

1. ( ) NORMAL RETIREMENT at or after age 65.
2. (x) EARLY RETIREMENT between age 60 and 65; payments to commence NOW XXX at age 65 _____.
3. ( ) EARLY RETIREMENT between age 55 and 60; payments to commence NOW _____ at age 65 _____.
4. ( ) TOTAL AND PERMANENT DISABILITY RETIREMENT. Total and permanent disability began _____.
5. ( ) DEFERRED VESTED PENSION upon attaining age 65.

B. It is my intention to retire on 10/1/71.
I wish to have my monthly retirement benefit payments commence in accordance with the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees.

Participant's Signature X Donald W Duffy Date 9-30-71.

C. ELECTION OF MONTHLY PENSION OPTION. (Check appropriate box below.)
In accordance with and subject to the provisions of the Minneapolis-Moline Pension Plan, I hereby elect to have the pension to which I am entitled (Line 7 or Line 10, Form 2) paid in the form indicated below:

[x] SURVIVING SPOUSE OPTION.
I hereby designate as my Contingent Annuitant (Name) Marcella J. Duffy (Relationship) wife, who I certify was born on (Date) 4/24/17 and was married to me on (Date) 4/26/41.

A Surviving Spouse Benefit equal to 55% of my monthly benefit will be continued to my Contingent Annuitant after my death.

It is understood that this election, if approved, will be automatically cancelled if I die prior to the due date for my first pension payment, in which event no payments whatsoever will be made to the Contingent Annuitant, or if the Contingent Annuitant dies prior to said due date, in which event payments will be made to me as though I had not elected this option.

[ ] LIFE ONLY BENEFITS.
I choose not to elect the foregoing option. It is understood that my pension payments under the Pension Plan will be paid during my lifetime in a level amount, subject to the deductions set forth in the plan, and that no payments will be made after my death.

IT IS UNDERSTOOD THAT THE CHOICE I HAVE MADE BY CHECKING ONE OF THE ABOVE BOXES IS IRREVOCABLE AND CANNOT BE RESCINDED OR CHANGED BY ME.

Date _____ Witness _____ Participant's Signature X Donald W Duffy

EXHIBIT A

In the Supreme Court of the United States

October Term, 1979

No. 79-349

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

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In the Supreme Court of the United States

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E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
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vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States Court of Appeals for the Eighth Circuit on the following grounds:

1. The judgment of the Court of Appeals is clearly correct under the holding of this Court in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), which is controlling here.

(a) Application of the Minnesota Pension Act[1] to White[2] would nullify express terms of pension agreements between White and the UAW[3] limiting White's liability for pension payments and superimpose retroactive obligations upon the Company substantially beyond the terms of its contracts with the UAW—thereby severely impairing contractual relationships.

(b) The State's[4] claim that there is no impairment of contract here by reason of employee beliefs contrary to express terms of White's collective bargaining agreements with the UAW is in conflict with fundamental principles of federal labor law applied by this Court in numerous cases, including *Ford Motor Company v. Huffman*, 345 U.S. 330, 338-339 (1953); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967); and *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50, 63 (1975).

(c) In *Allied*, this Court found that the identical statute, the Minnesota Pension Act, "simply does not possess the attributes of those state laws that in the past have survived challenge under the Contract Clause of the Constitution." 438 U.S., at 250. The State's attempt to reargue on this appeal the purpose, necessity and reasonableness of the

1. The Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974), is referred to herein as the "Minnesota Pension Act." The Act is set forth in the appendix to the State's jurisdictional statement.

2. Appellees White Motor and White Farm, its subsidiary, are collectively referred to herein as "White."

3. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, the Union representing White employees, is referred to herein as the "UAW."

4. Appellant is referred to herein as the "State."

Minnesota Pension Act is not only ineffective but is barred by collateral estoppel under principles announced by this Court in *Blonder-Tongue Laboratories, Inc. v. University Foundation*, 402 U.S. 313 (1971), and *Parklane Hosiery Co. v. Shore*, ... U.S. ....., 99 S.Ct. 645 (1979).

2. There is no conflict of decision and the question raised by the State is so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether the Minnesota Pension Act impermissibly impairs the obligation of pension contracts entered into between White and the UAW, the union representing employees of White.

STATEMENT

The record before this Court on this appeal is substantially the same as the record before the Court in *Malone v. White Motor Corp.*, 435 U.S. 497 (1978), where the Court held that the Minnesota Pension Act was not preempted by federal labor law.[5]

In *Malone*, this Court expressly stated in its opinion that White's constitutional claims, including a claim that the Minnesota Pension Act is unconstitutional under the Contract Clause, were not at issue and would be decided

5. Attached hereto in an appendix are the following from the record: (a) portions of the affidavit of H. Herbert Phillips, and (b) the pension guarantees agreed upon in 1968 and 1971 collective bargaining negotiations between White and the UAW, which were attached as exhibits to the Phillips affidavit. References to pages of the appendix are noted as "A ".

by the District Court after remand (435 U.S., at 514-515). Following the decision in *Malone v. White Motor Corp.*, this Court decided the Contract Clause issue in *Allied Structural Steel Co. v. Spannaus*. In that case this Court found that the precise statute involved in this case, the Minnesota Pension Act, constituted an unconstitutional impairment of contract with respect to Allied Structural Steel Co. The District Court and Court of Appeals have applied the *Allied* holding to this case and have found that the Minnesota Pension Act is unconstitutional as applied to White.

The facts of this case are recited in detail in the opinion of this Court in the preemption case, *Malone v. White Motor Corp.*, 435 U.S., at 499-502, and in the opinion of the Court of Appeals for the Eighth Circuit in *White Motor Corp. v. Malone*, 545 F.2d 599 (1976), at 602-603. The State's statement of the case in significant ways is inconsistent with the record facts. These record facts are reviewed briefly below.

White in 1963 purchased two farm equipment manufacturing plants located in Hopkins, Minnesota, and Minneapolis, Minnesota. The employees at these plants were represented by the UAW and were covered by a collectively bargained pension plan originally established in 1950. In collective bargaining agreements subsequent to 1950, the pension plan was amended from time to time to increase substantially the level of scheduled pension benefits. These increases in scheduled pension benefits were applied to years of prior service as well as to years of future service. The inevitable result was to increase the unpaid past service liability, which is the excess of accrued liability over the present value of the assets of a pension fund. This unpaid past service liability was to be met through contributions by the employer from its continuing operations. By the express terms of the pension plan, an amortization period of 35 years was provided for funding the past service liability (A4-A5; 435 U.S., at 500, n.3).

In language unchanged since the 1950 pension plan, the 1971 plan contained the following provisions concerning responsibility for the payment of pensions:

> *Section 6.09.* Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * * * *
>
> *Section 6.17.* No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.
>
> * * * * *
>
> *Section 9.04.* * * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent. (A6; 435 U.S., at 500, n.2).

In collective bargaining negotiations in 1968, and again in 1971, the UAW recognized that the pension plan might soon be terminated and that termination of the plan when the funding schedule had not been completed would result in loss of pensions (A7). For this reason, in 1968 and in 1971 negotiations, the UAW asked that White enter into an agreement providing a guarantee of pensions in the event of termination of the plan (A7). In each of those negotiations White did contract with the UAW to guarantee pensions at designated levels, although lower than

scheduled levels, if there should be a closing of the Minnesota plants and a resulting termination of the pension plan (A7; 435 U.S., at 501). Contrary to the State's assertion (Br. 8),[6] White, by virtue of these guarantees, assumed additional liability for pension payments in the amount of $7,000,000 above the assets of the fund[7] (A5, A7; 435 U.S., at 501). The provisions of the negotiated pension plan limiting White's liability to these guarantees remained in effect (A6; 435 U.S., at 500).

After suffering losses at White Farm in excess of $21,000,000 in the three years from 1969 through 1971, White early in 1972 informed the UAW of its intention to close the Minneapolis (Lake Street) and Hopkins plants (A7; 435 U.S., at 501, n.5). As a result of subsequent negotiations, the Hopkins plant has continued to operate,[8] but operations at the Minneapolis (Lake Street) plant were terminated in June of 1972. Relying on Section 10.2 of the plan, which expressly provided that the employer had the right to terminate the plan at any time, White on June 30, 1972, acted to terminate the plan. Arbitration

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6. References to pages of the State's jurisdictional statement are noted as "Br. ____."

7. The State (Br. 8, n.16) ignores established facts and suggests that the pension guarantees were not part of the negotiations between White and the UAW. The pension guarantee letters state that the guarantees were agreed upon in the contract negotiations between White and the UAW (A11, A13). This fact is confirmed by Herbert Phillips who is in charge of collective bargaining for White (A1, A7). The District Court and the Court of Appeals so found in their decisions in *Malone v. White Motor Corp.*, and this Court in *Malone* concluded:

> "During the 1968 and 1971 negotiations, however, the UAW obtained from appellee [White] guarantees that, upon termination, pensions for those entitled to them would remain at certain designated levels, though lower than those specified in the Plan." 435 U.S., at 501.

8. By later agreement between White and the UAW, a new pension plan is in effect at the Hopkins plant.

followed. The arbitrator ruled that the plan could not be effectively terminated until May 1, 1974, the expiration date of the collective bargaining agreement then in effect (435 U.S., at 501, n.5; 438 U.S., at 248, n.20). Thereafter, White took action again to terminate the plan on May 1, 1974, and the plan terminated on that date.

White continued to pay pensions in full from the pension fund until March, 1976, when the assets of the fund were exhausted. Since March, 1976, White has honored its pension guarantee agreement with the UAW by paying pensions from its own funds at the levels provided by the 1971 pension guarantee.

After the initial attempt by White to terminate the pension plan and just twenty days before the plan's termination on May 1, 1974, the Minnesota Legislature, on April 9, 1974, enacted the Minnesota Pension Act which was signed the next day by the governor in a public ceremony at the site of White's then demolished Minneapolis plant (A8; 438 U.S., at 248, n.20).

Sections 181B.03-.06 of that Act impose a "pension funding charge" directly on employers. Irrespective of contrary terms of the pension plan, those sections provide that, upon termination of a pension plan, any employee with ten years of credited service shall have a right to specified pension benefits computed in accordance with the statute. That right is enforceable directly against the employer rather than against the pension fund to which the employer has contributed. Payment is to be made through the employer's immediate purchase of prepaid deferred annuities sufficient to provide full pensions for all employees who have worked at least ten years.

When the Commissioner of Labor and Industry took steps to enforce the Minnesota Pension Act against White,

this action was filed on May 15, 1975. The amended complaint asserted both a claim that the Minnesota Pension Act was preempted by federal labor law and claims that the Act was unconstitutional under the Contract Clause and other clauses of the United States Constitution. On August 18, 1975, the State notified White that a pension funding charge of $19,150,053 under the Minnesota Pension Act was being assessed against the Company (A8, A10; 435 U.S., at 502). Using the procedure mandated by *Hagans v. Lavine*, 415 U.S. 528 (1974), White sought a preliminary injunction on the ground that the Minnesota Pension Act was preempted by federal labor law. The District Court denied White's motion for an injunction. There followed appeals on the labor law preemption issue eventually decided by this Court in *Malone v. White Motor Corp.*, 435 U.S. 497 (1978).

On June 28, 1978, this Court decided *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). There the Court held that the Minnesota Pension Act was unconstitutional as violative of the Contract Clause of the Constitution. Relying on the Supreme Court decision in *Allied*, White sought and obtained summary judgment in the United States District Court for the District of Minnesota on the ground that the Minnesota Pension Act as applied to White was unconstitutional as violative of the Contract Clause, ... F. Supp. ..... (1978). The judgment of the District Court was affirmed by the United States Court of Appeals for the Eighth Circuit on June 5, 1979, ... F.2d .....

ARGUMENT

1. The Judgment of the Court of Appeals Is Clearly Correct Under the Holding of This Court in Allied Structural Steel Co. v. Spannus, Which Is Controlling Here.

In *Allied*, this Court found that the Minnesota Pension Act severely impaired contractual relationships since the Act "grossly distorted the Company's contractual relationships by superimposing retroactive obligations upon the Company substantially beyond the terms of its employment contracts." (438 U.S., at 249-250). The Court went on to hold that the impairment in *Allied* was unconstitutional as the Minnesota Pension Act did not possess the attributes of those state laws that have survived challenge under the Contract Clause (438 U.S., at 250).

In this case, the contracts under consideration are collective bargaining agreements between White and the UAW, the union representing White employees. The Minnesota Pension Act substantially impairs these contracts and is therefore unconstitutional.

a. The Minnesota Pension Act substantially impairs White's collective bargaining agreements with the UAW

Collective bargaining agreements between White and the UAW dealt directly with the extent of White's liability for the payment of pensions in the event of pension plan termination before pension funding was completed. Those agreements called for a guarantee by White of pensions at an agreed level and provided that, in the event of termination of the pension plan and exhaustion of the pension fund, White's liability would be limited to making the payments called for by the pension guarantee.

Both the Court of Appeals in the preemption case, *White Motor Corp. v. Malone,* 545 F.2d 599, and this Court in its decision on that issue of labor law preemption, 435 U.S. 497, recognized the areas in which the Minnesota Pension Act purported to override the collectively bargained pension plan. This Court described the conflict between the Minnesota Pension Act and the White-UAW pension contracts as follows:

> On appeal, the Court of Appeals for the Eighth Circuit held that the Pension Act was pre-empted by federal labor law, and reversed the District Court. 545 F.2d 599 (1976). The reason was that the Pension Act purported to override the terms of the existing pension plan, arrived at through collective bargaining, in at least three ways: It granted employees vested rights not available under the pension plan; to the extent of any deficiency in the pension fund, it required payment from the general assets of the employer, while the pension plan provided that benefits shall be paid only out of the pension fund; and the Pension Act imposed liability for post-termination payments to the pension fund beyond those specifically guaranteed. 435 U.S., at 503.

The State, under the Minnesota Pension Act, sought to impose on White an obligation to pay immediately $19,-150,053. The following statements by this Court in *Allied* make it clear that the impairment found in *Allied* (where the pension funding charge was $185,000) is present to an even greater degree here:

> Thus, the statute in question here nullifies express terms of the company's contractual obligations and imposes a completely unexpected liability in potentially disabling amounts. There is not even any provision for gradual applicability or grace periods. 438 U.S., at 247.

* * * * *

> Entering a field it had never before sought to regulate, the Minnesota Legislature grossly distorted the company's existing contractual relationships with its employees by superimposing retroactive obligations upon the company substantially beyond the terms of its employment contracts. 438 U.S., at 249-250.

It would be hard to find statements more descriptive of the impairment of White contracts by the application of the Minnesota Pension Act. It is clear that this Court in *Allied* was concerned with the severity of the impairment resulting from the imposition of additional obligations rather than, as the State claims (Br. 10-11), the particular manner in which the additional obligations were imposed.[9]

Not only did the Minnesota Act severely impair the collectively bargained White pension plan, but the imposition of that massive additional liability on White was completely unexpected. In 1968 and 1971 labor contract negotiations with the UAW, White agreed to guarantee pensions at certain designated levels, though lower than those specified in the pension plan. Under the negotiated contracts with the UAW, White's liability for pension payments was limited to following the contractual funding schedule so long as the plan was in effect and honoring the

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9. It should not be overlooked that the Minnesota Pension Act would impose severe liability upon White as a result of the change in vesting requirements. There are 44 former White employees who are not entitled to vested benefits under the negotiated pension plan since they had not attained age 40, but who would receive deferred vested benefits under the Minnesota Pension Act (A9). This is in comparison to the situation in *Allied*, where *nine* former Allied employees were affected by the Act's vesting provisions (438 U.S., at 239).

pension guarantee agreement in the event the plan was terminated. White has honored these commitments. Having expressly bargained to an arm's-length agreement on the extent of its liability for pension payments in the event of pension plan termination, White was entitled to and did rely upon the collectively bargained limitations on liability.[10]

Faced with these facts, the State argues that there is no substantial impairment since some retirees "thought" or "understood" that their pensions were guaranteed beyond the contractual guarantees given by White.[11] These are the very retirees who are the beneficiaries of the pension guarantees negotiated by White with the UAW and currently being paid by White. Not only did the negotiated pension plan expressly limit White's liability, but copies of that pension plan were distributed to White employees who were urged to examine the plan in detail. In the face of these uncontroverted facts, it is difficult to understand how the State can in good faith claim that White has obligations to employees in conflict with its agreements with the UAW. In any event, under established principles of federal labor law, any claim of employee reliance which is contrary to the terms of applicable collective bargaining agreements cannot stand.

---

10. The suggestion of the State (Br. 12) that an arm's-length agreement negotiated with an international union representing employees is entitled to less protection under the Contract Clause of the Constitution than a contractual relationship resulting from the unilateral institution of a pension plan is patently unsound.

11. The State in the jurisdictional statement repeatedly claims that White promised to guarantee full pension benefits (Br. 8, 11, 15). In fact, the affidavits of retirees cited by the State allege only that those retirees "thought" or "understood" that their pensions were fully guaranteed. In any event, national labor policy extinguishes the power of a union-represented employee to order his own relationships with his employer concerning bargainable subjects. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967), and see p. 13, *infra*.

This Court has repeatedly recognized that the National Labor Relations Act gives a union "not only wide responsibility but authority to meet that responsibility," *Ford Motor Co. v. Huffman*, 345 U.S. 330, 339 (1953), and that national labor policy "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interest of all employees" and "[t]hus only the union may contract the employee's terms and conditions of employment * * *." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967); *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50, 63 (1975).

If a collective bargaining agreement could be nullified by individual employee beliefs contrary to express terms of the bargained agreement, collective bargaining would become a futile exercise. Employees are bound by agreements entered into by their collective bargaining agent, even if they are unaware of the terms of the agreement. See, *e.g.*, *U. S. Steel Corporation v. Nichols*, 229 F.2d 396, 402 (6th Cir. 1956). The employer does *not* contract with the employees; to the contrary, it contracts with the union, thereby binding the employees.

There is here a severe impairment of contract, unaffected by employee beliefs contrary to the express terms of contracts negotiated with the employees' union.

b. The State's claim that the Minnesota Pension Act serves a public purpose in a reasonable and necessary manner is simply a restatement of arguments made to and rejected by this Court in Allied and, as such, is not only ineffective but is barred by collateral estoppel

The State contends that the Minnesota Pension Act serves a public purpose in a reasonable and necessary

manner (Br. 13-16). The opinion of this Court in *Allied* completely refutes the State's assertion. The tabulation below compares the claims of the State on the purpose and effect of the Minnesota Pension Act with the findings of this Court in *Allied*.

Claims of the State	Findings of This Court
"The public purposes of the Minnesota Pension Act, in particular, have been noted specifically by the Minnesota Supreme Court." (Br. 14).	"The Minnesota Supreme Court, *Fleck v. Spannaus*, ... Minn. ....., 251 N.W.2d 334, engaged in mere speculation as to the state legislature's purpose." (438 U.S., at 248, n.19).
While the Minnesota Pension Act can now be applied only to about 1200 White Motor employees, "at the time of the passage of the Minnesota Pension Act, the Minnesota Legislature had every reason to believe that the Act would protect thousands of Minnesota workers." (Br. 15-16).	The only indication of legislative intent is that the problem of pension plan termination was brought to the attention of the Minnesota legislature when White closed one of its Minnesota plants and attempted to terminate its pension plan. (438 U.S., at 247-248). "Not only did the Act have an extremely narrow aim, but its effective life was extremely short. The United States House of Representatives had passed a version of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (1976 ed.), on February 28, 1974, 120 Cong. Rec. 4781-4782 (1974), and

	the Senate on March 4, 1974, *id.*, at 5011. Both versions expressly pre-empted state laws. That the Minnesota Legislature was aware of the impending federal legislation is reflected in the explicit provision of the Act that it will 'become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.' Minn. Stat. § 181B.17." (438 U.S., at 248, n.21). "Thus, the Minnesota Act was in force less than nine months, from April 10, 1974 until January 1, 1975." (438 U.S., at 249, n.21).
The Act is "a broad enactment regulating a range of subjects in the area of private pensions." (Br. 13).	"[W]hether or not the legislation was aimed largely at a single employer, it clearly has an extremely narrow focus." (438 U.S., at 248).[12]

12. See 438 U.S., at 248, n.20, reciting that after White had been prohibited from terminating its pension plan until May 1, 1974, the Minnesota Pension Act was passed on April 9, 1974 to become effective on April 10, and when White proceeded to terminate its collectively bargained pension plan at the earliest possible date, May 1, 1974, the State assessed a deficiency of more than $19 million. In addition, the Minnesota Pension Act was signed by the governor in a public ceremony at the site of White's demolished Minneapolis plant (A8).

The Act "falls within the broad scope of the police power of the State of Minnesota." (Br. 14).

"[T]his law can hardly be characterized . . . as one enacted to protect a broad societal interest rather than a narrow class (438 U.S., at 248-249). * * * The law was not even purportedly enacted to deal with a broad, generalized economic or social problem." (438 U.S., at 250).

The Act operates in a "necessary" and "reasonable manner." (Br. 13-16).

The Act "invaded an area never before subject to regulation by the State" (438 U.S., at 250) and "did not effect simply a temporary alteration of the contractual relationships of those within its coverage, but worked a severe, permanent, and immediate change in those relationships - irrevocably and retroactively." (438 U.S., at 250). "There is not even any provision for gradual applicability or grace periods." (438 U.S., at 247). "Compare the gradual applicability of ERISA, which itself is not even mandatory. At the outset ERISA did not go into effect at all until four months after it was enacted. 29 U.S.C. § 1144 (1976 ed.). Funding and vesting requirements were delayed

for an additional year. §§ 1086 (b), 1061 (b) (2) (1976 ed.). By contrast, the Minnesota Act became fully effective the day after its passage. The District Court rejected out of hand the argument that employers were constitutionally entitled to some grace period to adjust their pension planning. 449 F.Supp., at 651." (438 U.S., at 249, n.23).

The arguments of the State concerning the purpose, necessity and impact of the Minnesota Pension Act are precisely the arguments made by it to this Court in *Allied*.[13] The findings and conclusions of this Court in rejecting the State's arguments leave no room for a suggestion that the defects of the Minnesota Pension Act relate only to the Act's impact on Allied Steel. The Act's lack of public purpose, its narrow focus and its failure to meet the standards of necessity and reasonableness are basic defects providing a defense to any attempt by the State to use the Act to change materially the obligations of a valid contract. The holding of this Court in *Allied* is clearly applicable here.

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13. The arguments concerning the public purpose of the statute, including arguments that the statute was a broad law and a major police power enactment serving the general welfare of the State, are found at pages 12-14 of the State's Motion to Dismiss or Affirm before this Court in *Allied*, at pages 7-8 and 12-14 of its Brief to this Court in *Allied*, and at pages 2-4 of its Petition for Rehearing, also addressed to this Court. The argument that the statute is necessary and reasonable is found at pages 14-19 of the State's Motion to Dismiss or Affirm and at pages 7-8 and 15-25 of its Brief to this Court in *Allied*.

In addition to the fact that *Allied* is as direct a precedent as can be imagined, the State through its officials was the defendant in *Allied* and is the defendant here. The doctrine of collateral estoppel precludes the State from relitigating here any issues decided adversely to the State in *Allied*.[14] Collateral estoppel is now applicable in federal courts in federal-question cases and may be used either offensively or defensively where the party against whom the doctrine is asserted had a full and fair opportunity to be heard on that issue in the prior litigation. *Parklane Hosiery Co. v. Shore,* ..... U.S. ....., 99 S. Ct. 645 (1979).

In affirming the decision of the Second Circuit in *Parklane,* this Court held that it was no longer "tenable to afford a litigant more than one full and fair opportunity for judicial resolution of the same issue," 99 S. Ct., at 650-652, a holding the Court had predicted in *Blonder-Tongue*

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14. In many respects, the *Allied* case and the *White* case have been companion cases. Both cases were commenced in 1975. The initial decisions of the District Court in the two cases were rendered on the same day, March 19, 1976. *Fleck v. Spannaus,* 412 F. Supp. 366 (D. Minn. 1976); *White Motor Corp. v. Malone,* 412 F. Supp. 372 (D. Minn. 1976). The two cases took different paths, primarily because of the labor law preemption issue which was present in *White,* but not in *Allied.* But the parties were fully aware of the fact that the Contract Clause issue was present in both cases. Because of the presence of this common issue, counsel for White filed an *amicus* brief and argued orally before the Three-Judge Court considering the *Fleck* case. See *Fleck v. Spannaus,* 449 F. Supp., at 645. Both the District Court and the Three-Judge Court made express references to the *White* case in their opinions. 412 F. Supp., at 368; 449 F. Supp., at 651. This Court was fully familiar with the facts of this case when it decided *Allied,* and this Court's opinion in *Allied* contains three separate references to the *White* case. 438 U.S., at 236, n.1; 239, n.8; 248, n.20. Although the *White* case was proceeding through the courts on a different issue, it was fully understood that the case would be back in the District Court on the Contract Clause issue if the labor law preemption issue were not dispositive. Thus, in the words of the Second Circuit, the *White* case was "known by everyone to be lurking in the wings," while the *Allied* case was being litigated. *Zdanok v. Glidden Co.,* 327 F.2d 944, 956 (2nd Cir. 1964).

Laboratories, Inc. v. University Foundation, 402 U.S. 313 (1971), at 328-329. In *Parklane,* this Court applied collateral estoppel offensively despite the fact that such application deprived the defendant of the right to a jury trial on the issue of liability. Here, White's assertion of collateral estoppel is defensive in that White is opposing the attempted enforcement by the State of the Minnesota Pension Act. The purpose, necessity and reasonableness of the Minnesota Pension Act are issues that the State may not relitigate in this appeal.

2. There Is No Conflict of Decision and the Question Raised by the State Is So Unsubstantial As Not to Need Further Argument.

The State has not cited and cannot cite any authority contrary to the decisions of the Court cited in support of this motion. The precise question here raised by the State has been answered in the holding of this Court in *Allied.* There is no reason for further argument.

CONCLUSION

For the reasons stated herein, Appellees respectfully request the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

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September 18, 1979

APPENDIX

PORTIONS OF AFFIDAVIT OF H. HERBERT PHILLIPS

State of Ohio
Cuyahoga County—ss.

H. HERBERT PHILLIPS, being first duly sworn, makes this Affidavit in support of Plaintiffs' Motion for Summary Judgment or in the alternative, for a Preliminary Injunction, and for this purpose deposes and says as follows:

1. He resides in Gates Mills, Ohio, which is a suburb of Cleveland, Ohio. He is and has been since August of 1971 Vice President, Personnel and Industrial Relations, of White Motor Corporation (White Motor) and in that capacity he has been and is in charge of collective bargaining with various unions representing employees in plants of White Motor and its subsidiaries throughout the country.

2. White Motor is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Cleveland in the State of Ohio. White Motor is and at all times referred to herein was engaged in the manufacture and sale, in interstate commerce, of trucks and motor truck parts. White Motor in 1974 had gross sales of approximately $1,390,000,000 and approximately 17,800 full time employees. * * *

3. White Farm Equipment Company (White Farm) is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

4. White Farm has a plant located at Hopkins, Minnesota which for the year 1974 had gross sales in excess of $38,000,000 and approximately 285 employees. Until approximately June 1972 White Farm also operated a second plant in Minnesota on Lake Street, Minneapolis. In operating the Hopkins facility White Farm regularly obtains and receives equipment, tools and supplies from various states of the United States outside Minnesota which are shipped across state lines to Hopkins facility; and White Farm regularly uses the interstate mails, other interstate communication systems and interstate transportation systems in operating the Hopkins facility.

5. In 1962 White Motor organized a subsidiary, Minneapolis-Moline, Inc., which on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called The Minneapolis-Moline Company) which had operated the plants in Minneapolis and Hopkins prior to January 1, 1963. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm Equipment Company and operated these Motec plants and other plants.

6. Since July 6, 1955, the production, maintenance and clerical employees at the Minneapolis and Hopkins plants have been represented, for purposes of collective bargaining, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW"). From September 7, 1950 to 1955 such production, maintenance and clerical employees had been represented, for purposes of collective bargaining, by the United Electrical, Radio and Machine Workers of America.

7. After White Motor acquired Minneapolis-Moline in January 1963, pension benefits as a result of negotiations

with the UAW rose at the following rates and average annual pensions increased as follows:

Year	Basic Benefit Rate and Maximum Years of Credited Service	Average Annual Pension Benefit
1963	$2.50 x years of service (Maximum 25 years)	$ 819
1964	$2.80 x years of service (Maximum 25 years)	819
1965	$2.89 x years of service (Maximum 25 years)	820
1966	$4.25 x years of service (Maximum 25 years)	1,437
1967	$4.25 x years of service (Maximum 30 years)	1,441
1968	$5.25 x years of service (Maximum 30 years)	1,816
1969	$5.25 x years of service (Maximum 30 years plus Supplemental Allowance)	1,868*
1970	$5.50, $5.75 and $6.00 x years of service (Maximum 33 years plus Supplemental Allowance)	2,100*
1971	Same as 1970	2,107*
1972	$6.50, $6.75 and $7.00 x years of service (Maximum 34 years plus Supplemental Allowance)	2,478

*Excluding Supplemental Allowances

8. Prior to 1968, there had been no provision in the pension plan negotiated with the UAW for these two Minnesota plants which required funding of unpaid past service liability under the plan. In 1968, through contract negotiations with the UAW, the following section was added to the pension plan covering the Minnesota plants:

> "The unfunded net deficiency as of January 1, 1963, will be amortized over a thirty (30) year period from January 1, 1963. The deficiencies resulting from benefit increases effective May 1, 1966 and May 1, 1967, will be funded uniformly over a thirty-year period from May 1, 1966 and May 1, 1967 respectively. The deficiencies resulting from benefit increases as negotiated to become effective May 1, 1968 and thereafter will be funded uniformly over a thirty (30) year period commencing with the effective date of each such benefit."

9. In the 1971-72 negotiations, culminating in the amended Pension Agreement and Plan executed in January 1972, (sometimes hereinafter called the "Plan") the Union demanded an increased level of pension benefits, and, in return for the Company's agreement to increase benefits, agreed to substitute 35-year funding of past service liability for the 30-year funding requirement contained in the 1968 Pension Plan. Deferred funding of past service liability is a common feature of pension plans. At the time the White-UAW contracts were negotiated, the thirty and thirty-five year amortization periods were consistent with industry practice. This kind of trading to obtain a quid pro quo for a new commitment is common in collective bargaining. The provision concerning funding in the amended Plan, effective as of January 1, 1971, reads as follows:

> "The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively."

10. When White Motor acquired Minneapolis-Moline in 1963, the Pension Fund for the Plan had assets of less than $500,000 and an unfunded past service liability of approximately $6,000,000. Since that time, the Company has made regular contributions to the Fund covering normal cost and amortization of past service liability. For example, contributions in 1963 totaled $528,000 and in 1971 totaled $1,225,269. The total contributions made by the Company to the Pension Fund under the Plan in the period from January 1, 1963 to September 1, 1975, were in excess of $10,200,000. From May 1, 1974 to September 1, 1975, Company contributions to the Pension Fund exceeded $2,000,000. During the period from January 1, 1963 to September 1, 1975 the total amounts of pension benefits disbursed from the Pension Fund were approximately $11,300,000. Of that amount, more than $2,300,000 in pension benefits have been paid to retirees since May 1, 1974.

11. In early 1972 the Minneapolis-Moline Division of White Farm and the UAW executed collective bargaining agreements covering production and maintenance and clerical employees at the Minneapolis and Hopkins plants for the period from May 1, 1971 to May 1, 1974. * * * Exhibit C to each such agreement incorporated a Pension Agreement and Plan (the Plan) originally agreed to in collective bargaining agreements entered into in 1950 and amended in subsequent labor negotiations, by the following language:

"The parties hereto have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this agreement the same as if set forth at length herein."

12. [Omitted]

13. In language unchanged since 1950, the Plan (as amended in the 1971-72 collective bargaining negotiations with the UAW) provided for payment of pensions as follows:

"Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * * *

"Section 6.17—No Other Benefits

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * * *

"Section 9.04—Rights of Employees in Fund

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent."

14. The UAW recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the Pension Fund and that termination of the Plan when the projected funding was short of accomplishment would result in loss of pensions. By reason of its awareness of this problem, the UAW insisted on and obtained, in the 1968 collective bargaining negotiations and again in the 1971 negotiations, agreements of White Motor to guarantee, "in the event there should be a closing of the Minneapolis-Moline plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan," payment of pensions at a designated level if the pension fund was insufficient to pay in full the pensions called for by the Pension Plan. The additional obligation of the Company by virtue of the Pension Guarantee is estimated at $7,000,000. Copies of these 1968 and 1971 pension guarantees are attached hereto as Exhibits 4A and 4B.

15. During the three-year period of 1969, 1970 and 1971, the Minneapolis-Moline Division incurred losses in excess of $21,000,000. Early in January 1972, before the collective bargaining agreement effective as of May 1, 1971 was executed by the parties, the Company advised the UAW that it intended to close the Minneapolis and Hopkins plants. Thereafter, the Company and the UAW conducted negotiations on the possibility of continued operations at one or both of these plants. As a result of those negotiations, while the feasibility of long term operation of the Hopkins plant was not established, operations at that plant have continued. Operations at the Minneapolis plant were terminated in June 1972 and the plant was closed and the building housing it demolished.

16. Section 10.02 of the Plan provided that "[t]he Company shall have the sole right at any time to terminate

the entire Plan." Relying on this provision, the Company on June 30, 1972 terminated the Plan. The UAW filed grievances challenging the Company's right to terminate the Plan prior to expiration of the collective bargaining agreements on May 1, 1974 and this question was subsequently submitted to arbitration. On or about August 30, 1973, an arbitration award was entered ruling that the Plan could not be effectively terminated prior to May 1, 1974. That award was thereafter confirmed in litigation testing the award and the Company has complied with the award. By reason of such arbitration award, the Company took action again to terminate the Plan on May 1, 1974, and the Plan terminated on May 1, 1974.

17. [Omitted]

18. The Minnesota Pension Act became effective on April 10, 1974 after the governor of Minnesota signed the act at the site of the then demolished Lake Street plant of the Company. That Act purports to impose upon Plaintiffs liabilities and charges in respect of pension benefits which are in direct conflict with the express agreements which Plaintiffs have reached through the collective bargaining process with the union representing White Farm employees in the Minnesota plants. Thus:

(a) The Minnesota Pension Act, in conflict with the express provisions of the Pension Plan, the March 3, 1972 pension guarantee negotiated with the UAW (Exhibit 4B hereto) and the Lake Street closing agreement of December 22, 1972, imposes on Plaintiffs a charge for full funding of all employee pensions upon termination of a Pension plan. On August 18, 1975 the Minnesota Department of Labor and Industry, in an attempt to enforce this pension funding charge, mailed to White Motor and White Farm notice of an assessment under the Minnesota Pension Act in the amount of $19,150,053. While the accuracy of the

computations of the Department of Labor and Industry is in dispute, if the Act is applied to Plaintiffs there will be imposed on Plaintiffs a liability of many millions of dollars in excess of the limits of Plaintiffs' liability under the agreements negotiated with the UAW.

(b) As of January 1, 1975 there were 981 retirees under the Plan and 260 active employees at the Hopkins plant who were participants in the Plan. In addition, there were, as of that date, 233 persons with vested rights to a deferred pension under the terms of the Plan by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In direct conflict with the provisions of the Plan, the Minnesota Pension Act purports to grant vested rights to employees who at the time of the termination of their employment had 10 years of service but had not attained age 40. The effect of this provision of the Minnesota Pension Act would be to grant deferred vested pensions to 44 terminated employees of White Farm who at the time of the termination of their employment had 10 years of service but had not attained age 40 and who therefore do not qualify for deferred vested pensions under the Plan negotiated by the Company and the UAW.

(c) [Omitted]

(d) [Omitted]

19. [Omitted]

20. [Omitted]

21. [Omitted]

Further, affiant sayeth not.

H. HERBERT PHILLIPS

EXHIBITS 4A AND 4B TO AFFIDAVIT OF H. HERBERT PHILLIPS—PENSION GUARANTEE LETTERS

MINNEAPOLIS-MOLINE, INC.,
Hopkins, Minnesota 55343

September 26, 1968

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During our recent contract negotiations the Union proposed and the Company agreed to guarantee retirement benefits under the Retirement Income Plan in the event there should be a closing of the Minneapolis-Moline Plants and resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after distribution of the Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1965, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.

3. The guarantee shall apply only to those employees who have ten or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments became due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement and for a period of one year thereafter, or until renewal of the Pension Agreement, whichever date occurs first.
6. This guarantee shall be automatically cancelled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

W. J. HUNT
Vice President & Treasurer

WJH/mf

MINNEAPOLIS-MOLINE
Division of White Motor Corporation
Hopkins, Minnesota 55343

March 3, 1972

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after the disposition of Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1968, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc., prior to acquisition by White Motor Corporation. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten (10) or more years of credited service at the date of termination of the Plan.

4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement or until renewal of the Pension Agreement, whichever date occurs first.
6. The guarantee shall be automatically canceled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

DONALD B. WYZLIC
Personnel Manager